No. 10183

United States

Circuit Court of Appeals

For the Ninth Circuit.

LANE-WELLS COMPANY, a corporation, and TECHNICRAFT ENGINEERING CORPORATION,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petitions to Review a Decision of the United States Board of Tax Appeals

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

RAPHAEL DECHTER, Esq.,

J. R. WHITE, C. P. A.

For Commissioner:

E. A. TONJES, Esq.,

ALVA C. BAIRD, Esq.

DOCKET NO. 99829

LANE-WELLS COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1939

Aug. 22—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 22—Copy of petition served on General Counsel.

Oct. 18—Answer filed by General Counsel.

Oct. 18—Request for Circuit hearing in Los Angeles, Calif., filed by General Counsel.

Oct. 21—Notice issued placing proceeding on Los Angeles calendar. Answer and request served.

1940

May 14—Hearing set June 3, 1940 at Los Angeles, Calif.

Jun. 5-6—Hearing had before Mr. Black on merit. Submitted. Motion to consolidate for hearing with 99830 granted. Continued to June 6, 1940. Petitioner's brief due 8/6/40, respondent's 9/6/40. Reply 10/5/40.

1940

Jul. 1—Transcript of hearing of June 5, 1940 filed.

Jul. 1—Transcript of hearing of June 6, 1940 filed.

Aug. 5—Brief filed by taxpayer, 8/5/40 copy served.

Sep. 6—Brief filed by General Counsel.

Oct. 3—Reply brief filed by taxpayer. 10/4/40. copy served.

1941

Jan. 31—Findings of fact and opinion rendered, Black. Decision will be entered under Rule 50.

Apr. 23—Joint motion to open record and for the introduction of further evidence filed.

May 12—Order granting motion to open record and for the introduction of further evidence entered.

May 29—Stipulation of facts filed.

May 29—Joint motion for extension of 30 days from June 4, 1941 to file briefs and 20 days thereafter to file reply briefs filed. 5/31/41 granted.

Jun. 21—Memorandum brief filed by taxpayer. 7/7/41 copy served.

Jul. 3—Supplemental memorandum brief filed by General Counsel.

1941

Jul. 23—Reply brief filed by taxpayer. 7/23/41 copy served.

Sep. 25—Supplemental opinion rendered, Black. Decision will be entered under Rule 50. 9/25/41 copy served.

Oct. 22—Computation of deficiency filed by General Counsel.

Oct. 25—Hearing set 11/12/41 on settlement.

Nov. 4—Computation of deficiency filed by taxpayer.

Nov. 19—Decision entered, Black, Div. 15. [1*]

1942

Feb. 11—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

Feb. 16—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit with assignments of error filed by taxpayer.

Feb. 25—Proof of service of filing petition for review filed by General Counsel. (2)

Feb. 27—Proof of service of filing petition for review filed by taxpayer.

Mar. 18—Certified copy of order from the 9th Circuit extending the time to June 22, 1942 for the preparation and transmission of the record filed. (Both causes.)

Mar. 27—Certified copy of order from the 9th Circuit re consolidation with docket 99830 filed. (Both causes.)

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*Page numbering appearing at top of page of original Reporter's Transcript.

1942

June 15—Mandate from U. S. Circuit Court of Appeals, 9th Circuit, dismissing appeal filed. (Commissioner's.)

June 15—Agreed statement of evidence filed.

June 15—Agreed praecipe filed.

June 19—Order re the transmission of exhibits 6, 7, 8, 9, 10, 11, 12 and 13 in their original form entered, Mr. Black, Div. 15.

June 22—Certified copy of an order from the 9th Circuit extending the time to July 22, 1942 to prepare and transmit the record filed. [2]

DOCKET NO. 99830

TECHNICRAFT ENGINEERING CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1939

Aug. 22—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 22—Copy of petition served on General Counsel.

Oct. 18—Answer filed by General Counsel.

Oct. 18—Request for Circuit hearing in Los Angeles, Calif., filed by General Counsel.

1939

Oct. 21—Notice issued placing proceeding on Los Angeles, Calif., calendar. Answer and request served.

1940

May 14—Hearing set June 3, 1940 at Los Angeles, Calif.

Jun. 5-6—Hearing had before Mr. Black on merits. Submitted. Motion to consolidate for hearing with 99829 granted. Continued to June 6, 1940. Petitioner's brief due 8/6/40, respondent's 9/6/40. Reply 10/5/40.

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Aug. 5—Brief filed by taxpayer. 8/5/40 copy served.

Sep. 6—Brief filed by General Counsel.

Oct. 3—Reply brief filed by taxpayer. 10/4/40, copy served.

1941

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1941

May 29—Joint motion for extension of 30 days from June 4, 1941 to file briefs and 20 days thereafter to file reply briefs filed. 5/31/41 granted.

Jun. 21—Memorandum brief filed by taxpayer. 7/7/41 copy served.

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Oct. 25—Hearing set 11/12/41 on settlement.

Nov. 4—Computation of deficiency filed by taxpayer.

Nov. 19—Decision entered, Black, Div. 15. [3]

1942

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Feb. 16—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

Feb. 25—Proof of service of filing petition for review filed by General Counsel. (2).

Feb. 27—Proof of service of filing petition for review filed by taxpayer.

1942

Mar. 15—Certified copy of order from the 9th Circuit extending the time to June 22, 1942 for the preparation and transmission of the record filed. (Both causes.)

Mar. 27—Certified copy of order from the 9th Circuit re consolidation with docket 99829 filed. (Both causes.)

June 15—Mandate from U. S. Circuit Court of Appeals, 9th Circuit, dismissing appeal filed. (Commissioner's.)

June 15—Agreed statement of evidence filed.

June 15—Agreed praecipe filed.

June 19—Order re the transmission of exhibits 6, 7, 8, 9, 10, 11, 12 & 13 in their original form entered, Mr. Black, Div. 15.

June 22—Certified copy of an order from the 9th Circuit extending the time to July 22, 1942 to prepare and transmit the record filed. [4]

United States Board of Tax Appeals
Docket No. 99829

LANE-WELLS COMPANY,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

PETITION

The above-named petitioner hereby petitions for

a redetermination of the liability as transferee set forth by the Commissioner of Internal Revenue in his notice of liability as transferee (Bureau symbols IT:LA:FHG-90D) dated June 1, 1939, and as a basis for its proceeding alleges as follows:

1. The petitioner is a corporation organized under the laws of the State of Delaware, with its principal office at 5610 South Soto Street, Los Angeles, California.

2. The notice of liability as transferee (a copy of which it attached and marked Exhibit A) was mailed to the petitioner on June 1, 1939.

3. The Commissioner proposes for assessment against the petitioner the amount of $74,647.41 alleging that said amount constitutes the petitioner's liability as transferee of the assets of Technicraft Engineering Corp., 5610 South Soto Street, Los Angeles, California, for normal income tax, surtax on personal holding companies and penalty of 25% of surtax on personal holding companies as follows: [5]

Year ending December 31	Normal income tax	Surtax on undistributed profits	Surtax on personal holding companies	Penalty of 25% of surtax on personal holding companies
1934			$ 3,178.80	$ 794.70
1935			9,474.53	2,368.63
1936			5,115.11	1,278.78
1937	$ 553.65	$ 643.15	40,992.05	10,248.01
Total	$ 553.65	$ 643.15	$58,760.49	$14,690.12

Proposed assessment $74,647.41

Corp., 5610 South Soto Street, Los Angeles, California, for the taxable years ended December 31, 1936 and December 31, 1937, discloses a deficiency of $1,196.80 for the taxable year ended December 31, 1937 and an overassessment of $21.82 for the taxable year ended December 31, 1936; and that the determination of the personal holding company surtax liability of the said Technicraft Engineering Corp. for the taxable years ended December 31, 1934, December 31, 1935, December 31, 1936, and December 31, 1937, discloses a deficiency of $58,760.49 and $14,690.12 in penalty; as shown in the statement attached. The amount of the deficiencies and penalty stated, plus interest as provided by law, constituting your liability as transferee of assets of said Technicraft Enginering Corp., will be assessed against you. The overassessment, to the extent that it represents an overpayment of tax, will be credited in the manner provided by law.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of his letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge,

Los Angeles, California, for the attention of IT: LA-FC. The signing and filing of this form will expedite the closing of your case by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner,
(Signed) By GEORGE D. MARTIN
Internal Revenue Agent
in Charge.

Enclosures:
Statement.
Form of waiver and acceptance. [12]

Lane-Wells Company, Transferee,
Los Angeles, California.

STATEMENT.

IT:LA
FHG-90D

Technicraft Engineering Corp.,
Transferor,
5610 South Soto Street,
Los Angeles, California.
Tax Liability for the Taxable Years Ended
December 31, 1934,
December 31, 1935,
December 31, 1936,
and
December 31, 1937.

Lane-Wells Company,
Transferee,
5610 South Soto Street,
Los Angeles, California.

Taxable Year	Liability	Assessed	Deficiency	Over-assessment
INCOME TAX				
Ended Dec. 31, 1936....	$24,479.03	$24,500.85	$ None	$21.82
Ended Dec. 31, 1937....	28,200.51	27,003.71	1,196.80	None
Totals, income tax.....	$56,679.54	$51,504.56	$1,196.80	$21.82
PERSONAL HOLDING COMPANY SURTAX				
Ended Dec. 31, 1934....	$ 3,178.80	None	$ 3,178.80	None
Ended Dec. 31, 1935....	9,474.53	None	9,474.53	None
Ended Dec. 31, 1936....	5,115.11	None	5,115.11	None
Ended Dec. 31, 1937....	40,992.05	None	40,992.05	None
Totals, personal holding company surtax.....	$58,760.49	None	$58,760.49	None
25% PENALTY, PERSONAL HOLDING COMPANY				
Ended Dec. 31, 1934....	$ 794.70	None	$ 794.70	None
Ended Dec. 31, 1935....	2,368.63	None	2,368.63	None
Ended Dec. 31, 1936....	1,278.78	None	1,278.78	None
Ended Dec. 31, 1937....	10,248.01	None	10,248.01	None
Totals, 25% penalty.	$14,690.12	None	$14,690.12	None

[13]

The records of this office indicate that the Technicraft Engineering Corp., 5610 South Soto Street, Los Angeles, California, has been dissolved and that assets were transferred to you on or about August 31, 1937.

The above-mentioned amounts represent your liability as a transferee of assets of the Technicraft

Engineering Corp., 5610 South Soto Street, Los Angeles, California, for deficiencies of income tax and personal holding company surtax due from the Technicraft Engineering Corp. for the taxable years ended December 31, 1934, 1935, 1936, and 1937.

[Endorsed]: U. S. B. T. A. Filed Aug. 22, 1939. [14]

[Title of Board and Cause—Docket No. 99829.]

ANSWER

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled proceeding, admits, denies, and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the Commissioner proposed for assessment against the petitioner, as a transferee of Technicraft Engineering Corp., deficiencies in income taxes for the year 1937 in the amount of $1,196.80, a deficiency in personal holding company surtaxes in the amount of $58,760.49 for the years 1934 to 1937, inclusive, a penalty of 25% of the personal holding company sur- [15] tax for the

years 1934 to 1937, inclusive. Denies the remainder of the allegations contained in paragraph 3 of the petition.

4. (a) to (l), inclusive. Denies the allegations of error set forth in subparagraphs (a) to (l), inclusive, of paragraph 4 of the petition.

5. (a) Admits that Technicraft Engineering Corp. was organized under the laws of California in the year 1932. Denies the remainder of the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) to (e), inclusive. Denies the allegations contained in subparagraphs (b) to (e), inclusive, of paragraph 5 of the petition.

(f) Admits that Technicraft Engineering Corp. was liquidated and all of its assets transferred to this petitioner and that the Technicraft Engineering Corp. was dissolved. Denies the remainder of the allegations contained in subparagraph (f) of paragraph 5 of the petition.

(g) to (o), inclusive. Denies the allegations contained in subparagraphs (g) to (o), inclusive, of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied. [16]

Further answering, respondent alleges:

7. That within the time required by law the Commissioner of Internal Revenue mailed a notice of deficiency to Technicraft Engineering Corp., asserting a deficiency in income taxes for the year

1937 in the amount of $1,196.80, and deficiencies in personal holding company surtaxes for the years 1934 to 1937, inclusive, in the respective amounts of $3,178.80, $9,474.53, $5,115.11, and $40,992.05, plus a penalty of 25% of the foregoing amounts for failure to file a personal holding company return in the respective amounts of $797.70, $2,368.63, $1,278.78, and $10,248.01.

8. That thereafter a petition praying for a redetermination of the asserted deficiencies was filed with the United States Board of Tax Appeals by Technicraft Engineering Corp. and bears Docket No. 99830 and is now pending before the said Board.

9. That no part of the asserted deficiencies in income taxes, personal holding company surtaxes, penalties and interest for the years 1934 to 1937, inclusive, has been paid and the entire amounts still remain outstanding and unpaid.

10. That subsequent to the date that the said income taxes, personal holding company surtaxes, penalties and interest became due, the Technicraft Engineering Corp. distributed all of its properties and assets to this petitioner. [17]

11. That said property and assets distributed by the Technicraft Engineering Corp. to this petitioner had a value in excess of the income taxes, personal holding company surtaxes, penalties and interest, as provided by law, involved in this proceeding.

12. That the Technicraft Engineering Corp. has since discontinued its business and dissolved.

13. That the transfer of all of its property and assets by the Technicraft Engineering Corp. to this petitioner was without consideration.

14. That this petitioner assumed and agreed to pay all of the liabilities of the Technicraft Engineering Corp., including its liability for Federal income, personal holding company surtax, penalties and interest for the years 1934 to 1937, inclusive.

Wherefore, it is prayed that the petitioner's appeal be denied, that the respondent's determination be approved, and that the petitioner be held to be liable at law and in equity as a transferee of the assets of the Technicraft Engineering Corp. in the amounts shown in the notice of deficiency from which this appeal was taken, together with interest thereon as provided by law.

Signed J. P. WENCHEL
FTH
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:
ALVA C. BAIRD,
FRANK T. HORNER,
E. A. TONJES,
Special Attorneys,
Bureau of Internal Revenue.

EAT:E 10/12/39

[Endorsed]: U. S. B. T. A. Filed Oct. 18, 1939. [18]

United States Board of Tax Appeals
Docket No. 99830

TECHNICRAFT ENGINEERING CORP.,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IT:LA:FHG-90D) dated June 1 1939, and as a basis for its proceeding alleges as follows:

1. The petitioner is a corporation organized under the laws of the State of California, with its principal office at 5610 South Soto Street, Los Angeles, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on June 1 1939.

3. The taxes in controversy are normal income tax, surtax on personal holding companies and penalty of 25% of surtax on personal holding companies as follows:

Year ending December 31	Normal income tax	Surtax on undistributed profits	Surtax on personal holding companies	Penalty of 25% of surtax on personal holding companies
1934			$ 3,178.80	$ 794.70
1935			9,474.53	2,368.63
1936			5,115.11	1,278.78
1937	$553.65	$643.15	40,992.05	10,248.01
Total	$553.65	$643.15	$58,760.49	$14,690.12
Proposed assessment				$74,647.41

[19]

The petitioner claims that it is entitled to refund of overpayments of normal income tax for 1937 of $7,483.16 and of surtax on undistributed profits for 1937 of $10,248.87 making a total amount in controversy of $92,379.44.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining that petitioner was a "personal holding company" for each of the years 1934 to 1937 inclusive.

(b) The Commissioner erred in failing to determine that the amounts of petitioner's income designated "royalties" were in fact compensation for tangible services rendered to affiliated corporations and as such did not constitute "personal holding company" income.

(c) The Commissioner erred in determining

that the failure of petitioner to file Form 1120-H for each of the years 1934 to 1937 inclusive was not due to reasonable cause.

(d) The Commissioner erred in asserting penalties of 25% of the surtax on personal holding companies for delinquency in filing Form 1120-H for each of the years 1934 to 1937 inclusive.

(e) The Commissioner erred in failing to determine that the period for assessment of any deficiency or penalty in respect of the 1934 income of petitioner had expired prior to the issuance of the deficiency notice.

(f) The Commissioner erred in failing to determine that the period for assessment of any deficiency or penalty in respect of the 1935 income of petitioner had expired prior to the issuance of the deficiency notice.

(g) In determining the liability of petitioner for surtax on undistributed profits and for surtax on personal holding companies in respect of its 1937 income, the Commissioner erred in not allowing a "dividends paid credit" for amounts distributed during 1937 in final and complete liquidation of petitioner. [20]

(h) The Commissioner erred in failing to determine that there was an overassessment of surtax on undistributed profits against petitioner for 1937 of $10,248.87.

(i) The Commissioner erred in failing to determine that the income and deductions re-

ported by petitioner for the period from June 1 1937 to August 31 1937 in fact constituted income and deductions of Lane-Wells Company, the successor corporation and not income and deductions of petitioner.

(j) The Commissioner erred in failing to determine that there was an overassessment of normal income tax against petitioner for 1937 of $7,483.16.

(k) The Commissioner erred in failing to recognize that by his past acts and conduct he is estopped from asserting any claim of liability against petitioner for surtax on personal holding companies or penalties thereon.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner was organized under the laws of California in 1932 to conduct the engineering, experimental and development work of the group of affiliated companies of which it was a member.

(b) In order to provide petitioner with funds to carry out its functions, the other companies paid to petitioner amounts which have been designated as "royalties" as consideration for experimental work, for engineering services and for the use of patents and inventions but no part of these amounts constituted a payment of income in respect of investments in such patents and inventions. The use of the word "royalties" was not intended to give that

word any legal effect and neither the use of the word "royalties" not the payments of amounts designated as "royalties" was intended to measure a return on investments in assets such as patents and inventions but the word was used as a convenience to designate the compensation paid to petitioner for services rendered. [21]

(c) Because of the identical stock interests of the shareholders of petitioner with their interests in the other companies the so-called royalties were not determined in accordance with the value of the services rendered but in an amount deemed necessary to provide the funds required to carry on the development work.

(d) These so-called royalties were not royalties in *in* fact and did not constitute personal holding company income.

(e) Petitioner's last taxable year was the calendar year 1937.

(f) Pursuant to a plan of reorganization, petitioner was liquidated effective as of May 31, 1937, all of its assets being transferred to Lane-Wells Company in consideration of the issuance of stock of that company to the former stockholders of petitioner which was dissolved as soon thereafter as possible, the date of the certificate of dissolution being October 22 1937. Since, as a result of its reorganization, all of the assets and stock of petitioner were

transferred effective as of May 31 1937, petitioner, subsequent to that date, had no shareholders within the meaning of Section 351 of the Revenue Act of 1936.

(g) During the last half of 1937 more than 50% in value of the outstanding stock of petitioner was not owned directly or indirectly by or for five or less individuals.

(h) The failure of petitioner to file Form 1120-H for each of the years 1934 to 1937 inclusive was due to reasonable causes and not due to negligence or to any intent to defeat or avoid payment of tax.

(i) Petitioner in good faith filed its regular tax returns (Form 1120) for 1934 on or about March 15 1935, for 1935 on or about March 15, 1936, for 1936 on or about March 15 1937 and for 1937 on or about March 15 1938, all within the time prescribed by law. Petitioner's officers believed that it was not a "personal holding company" and so stated in the returns. This belief was substantiated by the fact that the returns for 1934 and 1935 were examined by representatives of the Treasury Department who apparently agreed that petitioner was not a "personal holding company" as no attempt was made to assert such surtax and a refund of 1935 income and excess-profits taxes was approved in the amount of $278.47 which was received by petitioner on June 19 1937. In view of such acts and conduct the

Commissioner is now estopped from asserting that petitioner was a "personal holding company." [22]

(j) The time for assessment against petitioner of additional tax and penalties in respect of its 1934 income expired three years after its 1934 return was filed or on or about March 15 1938.

(k) The time for assessment against petitioner of additional tax and penalties in respect of its 1935 income expired three years after its 1935 return was filed or on or about March 15 1939.

(l) Of the amounts distributed in liquidation of petitioner not less than $65,814.75 was properly chargeable to earnings and profits accumulated subsequent to February 28 1913 and in determining the surtax on undistributed profits and the surtax on personal holding companies of petitioner for 1937 a "dividends paid credit" in this amount should be allowed.

(m) The income tax return filed by petitioner for 1937 included net income of $49,887.61 for the period from June 1 1937 to August 31 1937 which was in fact net income of Lane-Wells Company, the successor corporation. Petitioner's net income for 1937 was $69,544.63.

(n) Petitioner paid $16,754.84 normal income tax and $10,248.87 surtax on undistrib-

uted profits tax for 1937 on or about the following dates:

March	15 1938	$ 6,750.93
June	15 1938	6,750.93
September	15 1938	6,750.93
December	15 1938	6,750.92
		$27,003.71

Wherefore, the petitioner prays that this Board may hear the proceeding and determine:

(a) That there is no deficiency due from petitioner for normal income tax, surtax on personal holding companies or penalties thereon for each of the years 1934 to 1937 inclusive. [23]

(b) That there are overpayments by petitioner of normal income tax for 1937 in the amount of $7,483.16 and of surtax on undistributed profits for 1937 in the amount of $10,248.87; that such amounts were paid by petitioner within three years before the filing of this petition and that petitioner is entitled to refund of these overpayments.

Los Angeles, California, August 11, 1939.

RAPHAEL DECHTER,
Counsel for Petitioner,
417 South Hill Street,
Los Angeles, California.

J. R. WHITE,
Agent for Petitioner,
530 West Sixth Street,
Los Angeles, California.

[24]

(Duly verified.) [25]

EXHIBIT A.

TREASURY DEPARTMENT
Internal Revenue Service
12th Floor,
U. S. Post Office and Court House,
Los Angeles, California.

JUN 1 1939

Office of
Internal Revenue Agent
in Charge
Los Angeles Division
IT: LA
FHG-90D
Technicraft Engineering Corp.,
5610 South Soto Street,
Los Angeles, California.

Sirs:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1936 and December 31, 1937, discloses a deficiency of $1,196.80 for the taxable year ended December 31, 1937 and an overassessment of $21.82 for the taxable year ended December 31, 1936; and that the determination of your personal holding company surtax liability for the taxable years ended December 31, 1934, December 31, 1935, December 31, 1936 and December 31, 1937, discloses a deficiency of $58,760.49 and $14,690.12 in penalty; as shown in the statement attached.

In accordance with the provisions of existing in-

ternal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of IT: LA-FC. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By (Signed) GEORGE D. MARTIN

Internal Revenue Agent in Charge.

Enclosures:

Statement.

Form of waiver and acceptance.

Claim. [26]

STATEMENT.

IT: LA
FHG-90D

Technicraft Engineering Corp.,
5610 South Soto Street,
Los Angeles, California.
Tax Liability for the Taxable Years Ended
December 31, 1934,
December 31, 1935,
December 31, 1936,
and
December 31, 1937.

Taxable year	Liability	Assessed	Deficiency	Over-assessment
INCOME TAX				
Ended Dec. 31, 1936....	$24,479.03	$24,500.85	$ None	$21.82
Ended Dec. 31, 1937....	28,200.51	27,003.71	1,196.80	None
Totals, income tax....	$52,679.54	$51,504.56	$1,196.80	$21.82
PERSONAL HOLDING COMPANY SURTAX				
Ended Dec. 31, 1934....	$ 3,178.80	None	$ 3,178.80	None
Ended Dec. 31, 1935....	9,474.53	None	9,474.53	None
Ended Dec. 31, 1936....	5,115.11	None	5,115.11	None
Ended Dec. 31, 1937....	40,992.05	None	40,992.05	None
Totals, personal holding company surtax.....	$58,760.49	None	$58,760.49	None
25% PENALTY, PERSONAL HOLDING COMPANY				
Ended Dec. 31, 1934....	$ 794.70	None	$ 794.70	None
Ended Dec. 31, 1935....	2,368.63	None	2,368.63	None
Ended Dec. 31, 1936....	1,278.78	None	1,278.78	None
Ended Dec. 31, 1937....	10,248.01	None	10,248.01	None
Totals, 25% penalty..	$14,690.12	None	$14,690.12	None

In making this determination of your income tax liability, and liability for personal holding company surtax and penalty, careful consideration has been given to the reports of examination dated October 21, 1938(2) and January 27, 1939; to your protests dated November 17, 1938, February 6, 1939 and February 18, 1939; and to the statements made at the conferences held on December 1, 1938 and March 20, 1939.

Inasmuch as you failed to file returns of personal holding company subject to surtax under Section 351 of the Revenue Acts of 1934 and 1936 as amended by Section 1 of the Revenue Act of 1937, within the time prescribed by law, 25 per centum of the surtax has been added thereto in accordance with the provisions of Sections 291 of the Revenue Acts of 1934 and 1936 and Section 406 of the Revenue Act of 1935.

The contention raised in your protest dated February 18, 1939, to the effect that the limitation provided by Section 275(a) of the Revenue Act of 1934 has interposed to prevent the assessment of the personal holding company surtax imposed by Section 351 of the said Revenue Act, is denied for the reason that you failed to file the return required by Section 351(c), and it is provided in Section 276(a) that in the event of such failure the tax may be assessed at any time.

The overassessment shown herein will be made the subject of a certificate of overassessment which will reach you in due course through the office of

the collector of internal revenue for your district, and will be applied by that official in accordance with Section 322 of the Revenue Act of 1936, provided that you fully protect yourself against the running of the statute of limitations with respect to the apparent overassessment referred to in this letter, by filing with the collector of internal revenue for your district, a claim for refund on form 843, a copy of which is enclosed, the basis of which may be as set forth herein.

If you do not acquiesce in all of the adjustments making up the deficiency indicated, but desire to stop the accumulation of interest on that part of the deficiency resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amount of the deficiency you desire to have assessed at once. The execution of the form for the agreed portion of the deficiency will not deprive you of your right to petition the United States Board of Tax Appeals for a redetermination of the deficiency. [28]

A copy of this letter and statement has been mailed to your representative, Mr. D. S. Jeppson, 639 South Spring Street, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

ADJUSTMENTS TO NET INCOME.

Taxable year ended December 31, 1934.

Net income as disclosed by return on Form 1120,....		$15,732.99
Additional deductions:		
(a) Additional capital stock tax.....	$ 15.00	
(b) Amortization of patents.....	309.69	324.69
Net income adjusted,.....		$15,408.30

EXPLANATION OF ADJUSTMENTS.

(a) The allowable deduction for Federal capital stock tax is represented by the amount of $265.00 which accrued and became a liability on July 1, 1934, in lieu of the amount of $250.00 paid in the taxable year and claimed as a deduction in the return.

(b) An allowable deduction of $309.69 for amortization of patents was charged to surplus account in error and was not claimed in the return filed.

It is held that for the taxable year you were a personal holding company as defined in Section 351 (b) (1) of the Revenue Act of 1934, and are subject to the surtax imposed by Section 351(a) of such Revenue Act.

Since you failed to file a personal holding company return as required by Section 351(c) of the Revenue Act of 1934, the imposition of the 25% penalty imposed by Section 291 is mandatory.

Since the provisions of Sections 275 and 322 of the Revenue Act of 1934 operate to prevent any adjustment of your income tax liability, the computation of tax liability herein is limited to your liability for the personal holding company surtax and penalty above mentioned. [29]

COMPUTATION OF TAX.

Taxable year ended December 31, 1934.

PERSONAL HOLDING COMPANY SURTAX.

Taxable net income	$15,408.30
Less: Federal income and profits taxes	2,163.29
Adjusted net income	$13,245.01
Less: 20 per cent of adjusted net income	2,649.00
Undistributed adjusted net income	$10,596.01
Surtax:	
30% of $10,596.01	$ 3,178.80
Penalty of 25% for delinquency; Section 291	794.70
Deficiency of personal holding company surtax and penalty	$ 3,973.50

ADJUSTMENT TO NET INCOME.

Taxable year ended December 31, 1935.

Net income as disclosed by return on Form 1120	$48,028.20
Additional deduction:	
Accrued capital stock tax	1,485.00
Net income adjusted	$46,543.20

EXPLANATION OF ADJUSTMENT.

The allowable deduction for Federal capital stock tax is represented by the amount of $1,750.00 which accrued and became a liability on July 1, 1935, in lieu of the amount of $265.00 paid in the taxable year and claimed as a deduction in the return.

It is held that for the taxable year you were a personal holding company as defined in Section 351 (b) (1) of the Revenue Act of 1934, and are subject to the surtax imposed by Section 351(a) of such Revenue Act.

Since you failed to file a personal holding company return as required by Section 351(c) of the Revenue Act of 1934, the imposition of the 25%

penalty imposed by Section 406 of the Revenue Act of 1935 is mandatory. [30]

The adjustment to net income noted above resulted in an *a*verassessment of income tax in an amount of $204.22 and an overassessment of excess-profits tax in an amount of $74.25, which have previously been made the subject of appropriate action in accordance with acceptance signed by you on October 2, 1936; in view of which the computation of tax liability herein is limited to your liability for the personal holding company surtax and penalty above mentioned.

COMPUTATION OF TAX.

Taxable year ended December 31, 1935.

PERSONAL HOLDING COMPANY SURTAX.

Taxable net income	$46,543.20
Less: Federal income and profits taxes	7,065.99
Adjusted net income	$39,477.21
Less: 20 per cent of adjusted net income	7,895.44
Undistributed adjusted net income	$31,581.77
Surtax:	
30% of $31,581.77	$ 9,474.53
Penalty of 25%, Section 406, Revenue Act of 1935	2,368.63
Deficiency of personal holding company surtax and penalty	$11,843.16

ADJUSTMENT TO NET INCOME.

Taxable year ended December 31, 1936.

Net income as disclosed by return on Form 1120	$111,460.51
Additional deduction:	
Accrued capital stock tax	71.00
Net income adjusted	$111,389.51

[31]

EXPLANATION OF ADJUSTMENTS.

The allowable deduction for Federal Capital Stock tax is represented by the amount of $1,821.00 for the year ended June 30, 1937 which accrued and became a liability on July 1, 1936, in lieu of the amount of $1,750.00 paid in the taxable year and claimed as a deduction from income.

It is held that for the taxable year you were a personal holding company as defined in Section 351(b) (1) of the Revenue Act of 1936, and are subject to the surtax imposed by Section 351(a) of such Revenue Act.

Since you failed to file a personal holding company return as required by Section 351(c) of the Revenue Act of 1936, the imposition of the 25% penalty imposed by Section 291 of such Revenue Act is mandatory.

COMPUTATION OF TAX.

Taxable year ended December 31, 1936.

NORMAL INCOME TAX.

Taxable net income,		$111,389.51
Less: Excess-profits tax,		None
Normal-tax net income,		$111,389.51
Normal tax:		
8% of $ 2,000.00	$ 160.00	
11% of $13,000.00	1,430.00	
13% of $25,000.00	3,250.00	
15% of $71,389.51	10,708.43	
Total normal tax,	$15,548.43	

SURTAX ON UNDISTRIBUTED PROFITS.
Section 14.

Taxable net income		$111,389.51
Less: Normal tax		15,548.43
Adjusted net income		$ 95,841.08
Dividends paid credit		40,000.00
Undistributed net income		$ 55,841.08
Surtax:		
7% of $ 9,584.10	$ 670.89	
12% of 9,584.11	1,150.09	
17% of 19,168.22	3,258.60	
22% of 17,504.65	3,851.02	
Total surtax	$ 8,930.60	
Normal tax	15,548.43	
Total income tax (normal tax and surtax)		$ 24,479.03
Income tax assessed (normal tax and surtax):		
Original, account No. 404177		24,500.85
Overassessment of income tax		$ 21.82

PERSONAL HOLDING COMPANY SURTAX.
Section 351.

Taxable net income		$111,389.51
Less: Federal income taxes		24,479.03
Adjusted net income		$ 86,910.48
Less: 20% of adjusted net income	$17,382.10	
Dividends paid credit	40,000.00	57,382.10
Undistributed adjusted net income		$ 29,528.38

Surtax:		
8% of $ 2,000.00	$ 160.00	
18% of 27,528.38	4,955.11	
Total surtax, Section 351,		$ 5,115.11
Penalty of 25%, Section 291,		1,278.78
Deficiency of personal holding company surtax and penalty,		$ 6,393.89

[33]

ADJUSTMENTS TO NET INCOME.
Taxable year ended December 31, 1937.

Net income as disclosed by return on Form 1120,		$119,432.24
Unallowable deductions:		
(a) Capital stock tax for year ended June 30, 1937,	$1,821.00	
(b) Capital stock tax for year ended June 30, 1938,	1,870.00	3,691.00
Net income, adjusted,		$123,123.24

EXPLANATION OF ADJUSTMENTS.

(a) Federal capital stock tax of $1,821.00 for the year ended June 30, 1937, deduction for which was claimed in the return, accrued and became a liability on July 1, 1936 and the deduction was allowed for the taxable year ended December 31, 1936.

(b) Federal capital stock tax for the year ended June 30, 1938, which you accrued as a liability and deducted in your return in an amount of $1,870.00, is not an allowable deduction from income for the taxable year for the reason that a capital stock tax return was filed for the said year making a new

declaration of "no value" for your capital stock (as permitted by the Revenue Act of 1938), and the Lane-Wells Company gave no effect to any liability assumed for such capital stock tax.

It is held that for the taxable year you were a personal holding company as defined in Section 351 of the Revenue Act of 1936 (Title 1A) as amended by Section 1 of the Revenue Act of 1937, and are subject to the surtax imposed by Section 351 of such amended Revenue Act.

Since you failed to file a personal holding company return as required by Section 358 of such amended Revenue Act, the imposition of the 25% penalty imposed by Section 291 is mandatory.

The return filed for the taxable year purports to account for the taxable income for the period from January 1 to August 31, 1937; after which latter date the business of your corporation was taken over and its activities conducted by Lane-Wells Company, pursuant to an agreement for reorganization entered into on or about June 1, 1937. [34]

The contention made in your protest, that the said return erroneously accounted for income accruing after June 1, 1937 which should have been returned by the successor corporation, is denied for the reason that the transfer of your assets and business was not effected at the time indicated in your protest and the items of income and deduction involved were properly reflected in your books and return.

The further contention raised in your protest, that

you should be allowed a further dividends paid credit (not claimed in your return) on account of assets distributed in complete liquidation, is denied for the reason that Article 27(f)—1 of Regulations 94 provides that no such credit is allowable in respect of non-taxable distributions.

COMPUTATION OF TAX.

Taxable year ended December 31, 1937.

NORMAL INCOME TAX.

Taxable net income		$123,123.24
Less: Excess-profits tax		None
Normal-tax net income		$123,123.24
Normal tax:		
8% of $ 2,000.00	$ 160.00	
11% of 13,000.00	1,430.00	
13% of 25,000.00	3,250.00	
15% of 83,123.24	12,468.49	
Total normal tax	$17,308.49	

[35]

SURTAX ON UNDISTRIBUTED PROFITS.

Taxable net income	$123,123.24
Less: Normal tax	17,308.49
Adjusted net income	$105,814.75
Less: Dividends paid credit	40,000.00
Undistributed net income	$ 65,814.75

Surtax:		
7% of $10,581.48	$ 740.70	
12% of 10,581.48	1,269.78	
17% of 21,162.95	3,597.70	
22% of 21,162.95	4,655.85	
27% of 2,325.89	627.99	
Total surtax,	$10,892.02	
Normal tax,	17,308.49	
Total income tax (normal tax and surtax),		$ 28,200.51
Income tax assessed (normal tax and surtax):		
Original, account No. 404456		27,003.71
Deficiency of income tax,		$ 1,196.80

PERSONAL HOLDING COMPANY SURTAX.

Taxable net income,		$123,123.24
Less: Federal income taxes,		28,200.51
Adjusted net income,		$ 94,922.73
Less: Dividends paid credit,		40,000.00
Undistributed adjusted net income,		$ 54,922.73
Surtax:		
65% of $ 2,000.00	$ 1,300.00	
75% of 52,722.73	39,692.05	
Total personal holding company surtax,		$ 40,992.05
Penalty of 25%, Section 291		10,248.01
Deficiency of personal holding company surtax and penalty,		$ 51,240.06

[Endorsed]: U.S.B.T.A. Filed Aug. 22, 1939. [36]

[Title of Board and Cause—Docket No. 99830]

ANSWER

Comes now the respondent by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the year 1937, personal holding company surtax for the years 1934 to 1937, inclusive, and a 25% penalty on personal holding company surtaxes for the years 1934 to 1937, inclusive.

4. (a) to (k), inclusive. Denies the allegations of error set forth in subparagraphs (a) to (k), inclusive, of paragraph 4 of the petition. [37]

5. (a) to (n), inclusive. Denies the allegations of fact contained in subparagraphs (a) to (n), inclusive, of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the petition be de-

nied and that the respondent's determination be in all respects approved.

(Signed) J. P. WENCHEL
FTH
J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:
ALVA C. BAIRD,
FRANK T. HORNER,
E. A. TONJES,
Special Attorneys,
Bureau of Internal Revenue.

EAT:E 10/12/39

[Endorsed]: U.S.B.T.A. Filed Oct. 18, 1939. [38]

[Title of Board and Cause.]

Docket Nos. 99829, 99830. Promulgated January 31, 1941.

FINDINGS OF FACT AND OPINION

1. Amounts constituting 15 percent of the gross receipts of certain corporations from gun perforation of oil wells received by the taxpayer corporation, more than 50 percent of whose stock was owned by not more than 5 individuals, in return for the use of from 85 to 100 of the taxpayer's patents and applications, of which 7 or 8 patents

related to gun perforation, held to be "royalties" within section 351 (b) (1) of the Revenue Acts of 1934 and 1936 and section 353 of the Revenue Act of 1936, as amended by section 1 of the Revenue Act of 1937, and the taxpayer corporation held to be a "personal holding company" within section 351 (b) (1) of the Revenue Acts of 1934 and 1936 and section 352 (a) of the Revenue Act of 1936, as amended, and subject to surtax under section 351 (a) of the Revenue Acts of 1934 and 1936 and section 351 of the Revenue Act of 1936, as amended.

2. The four stockholders of the taxpayer corporation, more than 80 percent of whose gross income was personal holding company income within section 353 of the Revenue Act of 1936, as amended by section 1 of the Revenue Act of 1937, signed a reorganization agreement in the first half of the taxable year, whereby a new corporation to be formed was to issue its stock in exchange for the stock of several corporations owned by the four stockholders of the taxpayer. During the last half of the year the new corporation secured a permit authorizing it to issue its stock and issued the stock and the taxpayer corporation transferred its assets to the new corporation and filed a certificate of winding up and dissolution. Held, the requirement that "at any time during the last half of the taxable year" more than 50 percent of the taxpayer's stock be owned by not more than five individuals had been met and the taxpayer was a "per-

sonal holding company" within section 352 (a) of the Revenue Act of 1936, as amended.

3. A personal holding company which distributed in liquidation, pursuant to a tax-free reorganization under section 112 (b) (6) of the Revenue Act of 1936, amounts representing earned surplus chargeable to earnings and profits accumulated subsequent to [39] February 28, 1913, held, entitled to a dividends paid credit for such amounts under section 27 (f) of the Revenue Act of 1936 without limitation by subsection (h) in determining its surtax on undistributed profits and its personal holding company surtax for 1937. Credit Alliance Corporation, 42 B. T. A. 1020, followed.

4. Petitioner Technicraft Engineering Corporation filed its income and excess profits tax returns for 1934 and 1935 on Form 1120 within the time required by law. The taxpayer, in good faith, believed that it was not a personal holding company and filed no return as a personal holding company on Form 1120 H, as required by law and Treasury regulations. Taxpayer's income and excess profits tax returns filed on Form 1120 made a full disclosure of its gross income and deductions and its resulting net income. Held, since the taxpayer failed to file a return as a personal holding company on Form 1120 H as required by law and Treasury regulations, the period of limitations prescribed by section 275 (a), Revenue Act of 1934,

has not run so as to bar the assessment of deficiencies in personal holding company surtaxes for the years 1934 and 1935.

5. A personal holding company filed income and excess profits tax returns for 1934, 1935, 1936, and 1937 on Form 1120 within the time required by law, in which a full disclosure was made of its gross income and deductions and resulting net income, but failed to file personal holding company returns on Form 1120 H for those years. Held, the imposition of 25 per cent delinquency penalties is mandatory under the applicable revenue acts and the Treasury regulations promulgated in pursuance thereof.

Raphael Dechter, Esq., for the petitioners.

E. A. Tojnes, Esq., and Alva C. Baird, Esq., for the respondent.

The Commissioner determined deficiencies in personal holding company surtax and penalties for the years 1934, 1935, 1936, and 1937 against the Technicraft Engineering Corporation, and against the Lane-Wells Co., as transferee, as follows:

	Surtax	Penalty
1934	$ 3,178.80	$ 794.70
1935	9,474.53	2,368.63
1936	5,115.11	1,278.78
1937	40,992.05	10,248.01

The Commissioner also determined an overassessment of $21.82 in income tax for 1936 and a deficiency of $1,196.80 in income tax for 1937 of the Technicraft Engineering Corporation and Lane-Wells Co., as transferee.

The petitions of the petitioners assign errors as follows:

(a) The Commissioner erred in determining that petitioner was a "personal holding company" for each of the years 1934 to 1937 inclusive. [40]

(b) The Commissioner erred in failing to determine that the amounts of petitioner's income designated "royalties" were in fact compensation for tangible services rendered to affiliated corporations and as such did not constitute "personal holding company" income.

(c) The Commissioner erred in determining that the failure of petitioner to file Form 1120-H for each of the years 1934 to 1937 inclusive was not due to reasonable cause.

(d) The Commissioner erred in asserting penalties of 25% of the surtax on personal holding companies for delinquency in filing Form 1120-H for each of the years 1934 to 1937 inclusive.

(e) The Commissioner erred in failing to determine that the period for assessment of any deficiency or penalty in respect of the 1934 income of petitioner had expired prior to the issuance of the deficiency notice.

(f) The Commissioner erred in failing to determine that the period for assessment of any deficiency or penalty in respect of the 1935 income of petitioner had expired prior to the issuance of the deficiency notice.

(g) In determining the liability of petitioner for surtax on undistributed profits and for surtax on personal holding companies in respect of its 1937 income, the Commissioner erred in not allow-

ing a "dividends paid credit" for amounts distributed during 1937 in final and complete liquidation of petitioner.

(h) The Commissioner erred in failing to determine that there was an overassessment of surtax on undistributed profits against petitioner for 1937 of $10,248.87.

(i) The Commissioner erred in failing to determine that the income and deductions reported by petitioner [Technicraft Engineering Corporation] for the period from June 1, 1937 to August 31, 1937, in fact constituted income and deductions of Lane-Wells Company, the successor corporation and not income and deductions of petitioner.

(j) The Commissioner erred in failing to determine that there was an overassessment of normal income tax against petitioner for 1937 of $7,483.16.

(k) The Commissioner erred in failing to recognize that by his past acts and conduct he is estopped from asserting any claim of liability against petitioner for surtax on personal holding companies or penalties thereon.

FINDINGS OF FACT

Petitioner Technicraft Engineering Corporation, hereinafter called Technicraft, a California corporation with its principal office in Los Angeles, was organized in December 1932, but remained inactive until March 1, 1934. Petitioner Lane-Wells Co., a
5 Delaware corporation with its principal office in Los Angeles, was organized in 1937.

The Lane-Wells Co., a California corporation, hereinafter called Lane-Wells Co. of California, was organized in March 1932. In that year it began selling packers, swabs, and swab rubbers as merchandise and sought to find new products that could be sold in the oil industry as merchandise or in the form of service. In June 1932 it began work on a gun perforator to be used in oil fields and organized Technicraft for the purpose of doing engineering and experimental research. On December 21, 1932, the Lane-Wells Co. of California obtained from Sidney W. Mims, under an exclusive [41] license agreement, an exclusive license to use and sell devices embodying an invention for perforating well casing for which Patent No. 1,582,184, dated April 27, 1926, had been issued to Mims. Under the agreement the Lane-Wells Co. of California was to pay $100 per month until March 1, 1934, and $200 per month thereafter. On March 1, 1934, the Lane-Wells Co. of California executed an assignment of exclusive license agreement, transferring to Technicraft its right to the exclusive license. On the same date Technicraft executed a sublicense agreement granting to the Lane-Wells Co. of California, "in consideration of the royalty hereinafter provided", a sublicense restricted to the State of California and including "any and all rights, privileges and remedies which it [Technicraft] might or could do, exercise or perform" under the assignment of exclusive license agreement. The sublicense agreement further provided, in part:

In consideration of the granting of said sub-license, said Lane-Wells Co., as sub-licensee, does hereby agree to pay to the Technicraft Engineering Corporation, a sub-licensor, a royalty of fifteen (15%) per cent of any and all gross receipts derived from the manufacture, sale, rental or use of any device of any kind by virtue of this sub-license agreement, such royalty to be payable on the 20th day of each and every month for the royalties accruing for the month previous. * * *

On February 13, 1936, Technicraft executed a license agreement granting to the Lane-Wells Co. of Oklahoma, an Oklahoma corporation, having a place of business at Oklahoma City, Oklahoma:

> * * * a non-exclusive license in and throughout the States of Oklahoma, Kansas, Wyoming, Colorado, and Montana only, subject to the terms and conditions of this agreement, to make or purchase for the Licensee's own use only, and to use but not to sell, rent, or lease to others said Perforators.

The license agreement also provides, in part:

I. Definitions:

> The term "Perforators" shall be construed to mean not only the patent specifically mentioned hereinbefore, but also any and all inventions, applications, patents and any continuations, divisions, and/or reissues thereof and whether in the nature of apparatus or processes

which the Licensor now owns or controls or which it may at any time during the life of this agreement own or control and which relate or are accessories to said Perforators. The term "Patent Rights" shall be construed to embrace as a group all the patents and applications herein specified or referred to or implied. The term "gross receipts" shall be construed to mean the total receipts derived in any manner whatsoever from the manufacture and/or use of any and all apparatus or processes covered by said Patent Rights without deductions of any kind or character.

* * * * *

IV. Royalties:

The royalty payments on the Patent Rights herein licensed shall be fifteen percent (15%) of the gross receipts; minimum royalties shall be not less than Seven Hundred and Fifty Dollars ($750.00) per month.

* * * * [42]

VII. Improvements by Licensee:

Licensee shall disclose to Licensor all inventions, applications, patents, or continuations, divisions and/or reissues, dominated by the Patent Rights Herein Defined which the Licensee may now own or control during the life of this agreement, or which may be jointly or solely invented by any officer, executive, agent, or employee of the Licensee; it being understood that the Licensee shall, upon execution of

this agreement, enter into the necessary agreements with its officers, executives, agents and employees to give effect to this section.

Under disclosure of such inventions, applications, patents, or continuations, divisions and/or reissues, dominated by the patent rights, the Licensor shall have a forty-five (45) day option period to accept and incorporate the same with the patent rights herein licensed; and, if the nature of the subject matter so accepted requires, to file the necessary patent applications thereon at its own expense. Should the Licensor fail to exercise its option, the Licensee shall retain full rights thereto.

On the same date Technicraft executed a similar agreement granting to the Lane-Wells Co. of Texas, a Texas corporation having a place of business at Houston, Texas, a "non-exclusive license in and throughout the States of Texas, Louisiana, Mississippi, Arkansas and New Mexico." The Texas corporation had been engaged in the business of gun perforating since September or October 1935. The Lane-Wells Co. of California, the Lane-Wells Co. of Texas, and the Lane-Wells Co. of Oklahoma each did a merchandise and oil field service business in their respective areas of operation. The business included the operation of a gun perforator, a strata-graph, which recorded by electricity the various formations underground, a fishing magnet, and fishing tools.

Technicraft conducted experiments, purchased

test instruments, and built models of devices, some of which were sold to the Lane-Wells Co. of California. Lane and Wells and employees of Technicraft assigned more than 50 patents to Technicraft. Technicraft owned at least 19 abandoned and unfiled inventions and in 1937 it had from 85 to 100 patents or patent applications which it was furnishing to the Lane-Wells companies on June 1, 1937, and of which 7 or 8 related to the basic principle of the Mims patent.

The purpose of the gun perforator is to make holes in pipe underground by shooting bullets horizontally through the casing and formations back of the casing after the gun has been lowered into a well by means of an electric cable which is operated from a truck with a pulley and hoist. At first the gun was used to perforate oil sands that had formerly been considered not worth while but many new uses for the gun have since been developed. The method enables perforation anywhere in the well.

Technicraft developed the type of truck used in the gun perforation business. It permits use of the truck motor for hoisting. [43] Technicraft also developed a brake for lowering the cable, a control panel, a throttle, an armature to indicate speed, a weight indicator, bridging plugs, pumping units, a fishing magnet, a device for measuring cable, a loud speaker for voice communication between the truck and the derrick floor of the well, a packing gland, which was a safety device to prevent the es-

cape of gas or oil, a method of using an X-ray machine on cable to determine deterioration, and safety switches to prevent accidental firing of the gun. A strata-graph developed by Technicraft from November 1935 through the middle of 1937 at an expense of between $50,000 and $60,000 was sold to the Lane-Wells companies but was finally abandoned, since it had no advantages over known geology. The various Lane-Wells companies did not have research or engineering departments but left all research to Technicraft. Technicraft sold apparatus to the various Lane-Wells companies at cost plus a slight profit. These sales of apparatus were never in any large amount in any taxable year. As the Lane-Wells companies developed manufacturing facilities, they took over manufacture. The merchandise sales were included on Technicraft's return as royalties. The amounts so included were small and the exact amounts are not given separately in the returns. In 1936 Technicraft occupied a building which was designed for it and contained electric and chemical laboratories, offices for engineers, and an X-ray room.

It would not have been possible to conduct a successful gun perforation business with the Mims patent alone, since it was merely a basic patent covering the idea of lowering a gun into a well and shooting a bullet horizontally to perforate the casing and made no provision for withstanding the explosion, for sealing the powder, and for satisfactorily lowering and raising the gun. Technicraft

developed a method of delayed fire, of sealing the gun, and a cable for lowering and raising the gun. The cable contained in its center a copper line for conveying electricity. These improvements by Technicraft made the gun perforator far more serviceable and valuable than was the gun perforator covered by the original Mims patent.

When the original exclusive license agreement was made with Mims by the Lane-Wells Co. of California on December 21, 1932, Lane and Wells agreed between themselves to set aside 15 percent of the income of the Lane-Wells Co. of California for research and development. No additional charge was made aside from the 15 percent of gross receipts provided for in the sublicense agreement with the Lane-Wells Co. of California and the license agreements with the Lane-Wells Co. of Texas and the Lane-Wells Co. of Oklahoma, although improvements were made by Technicraft on packers assigned to it by the Lane-Wells Co. of California. There was no license agreement be- [44] tween Technicraft and Lane-Wells International Inc., a California corporation operating in foreign countries, but Technicraft collected 15 percent of the gross receipts of Lane-Wells International, Inc., from gun perforation, as it did from the other Lane-Wells companies. The license agreements of Technicraft with the Lane-Wells Co. of Texas and the Lane-Wells Co. of Oklahoma expired in February 1937, and although no new agreements were executed those companies continued to pay 15 percent

of their gross receipts from gun perforation to Technicraft until it was merged with the Lane-Wells Co. of Delaware.

Throughout the time during which Technicraft was doing business all of its stock and all of the stock of the Lane-Wells Co. of California was owned by W. G. Lane, W. T. Wells, and their wives. They also owned all of the stock of the Lane-Wells Co. of Oklahoma, the Lane-Wells Co. of Texas, and Lane-Wells International, Inc., and Alexander Anderson, Inc., a California corporation. Lane and Wells were directors and officers of the various companies.

In 1936 Lane and Wells discussed with an attorney, a broker, and an accountant a proposed reorganization of Technicraft and the various Lane-Wells companies into a new corporation, to be known as the "Lane-Wells Company", a Delaware corporation, and on June 1, 1937, a reorganization agreement was signed by Lane and Wells and their wives and by officers of Technicraft, the various Lane-Wells companies, including the new Delaware corporation, and Alexander Anderson, Inc. The reorganization agreement provided in part:

> First: It is hereby stated and agreed that the stockholders shall surrender all of their stock in each and all of the constituent companies to the Delaware company in exchange for such proportionate share of an issue of 250,000 shares of the Delaware company, the receipt of which will leave said stockholders

and each of them in proportionately and substantially the same position with reference to the Delaware company as is now held by each and all of them in the various constituent companies.

Second: It is hereby agreed and stated that the Delaware company shall forthwith secure the necessary legal permission to issue 250,000 shares of its authorized capital of 500,000 shares of no par value stock for the purpose of transferring and exchanging the same for all the stock in the various constituent companies, such exchange of stock to take place upon such legal permission being secured.

Third: It is understood and agreed that the amount of stock of the Delaware company that is to be received by each of the stockholders is to be determined by the proportion of the value of the stock of each of the stockholders to the aggregate value of all of the stock of the constituent companies. It is intended that by the term "value" hereinafter and hereinbefore used, shall be meant the book value of the stock of each of the companies as of the date of June 1st, 1937, and which book value shall be determined by a certified public accountant from the books of the constituent companies.

On July 22, 1937, a permit was granted by the State Corporation Department of California authorizing the new Delaware corporation [45] to

issue 250,000 shares of stock to Wells and Lane and their wives in consideration for the transfer of all of the stock of the various Lane-Wells companies. The stock was actually issued by the new Delaware corporation to Wells and Lane and their wives in equal proportions on July 29, 1937. Technicraft, on July 29, 1937, issued its certificate No. 7 for 25,000 shares of stock, being all of its issued and outstanding capital stock, to the new Delaware corporation. The certificate was based upon the reissuance of the certificates formerly held by Wells and Lane and their wives.

Immediately after the execution of the reorganization agreement negotiations were entered into with brokers for the sale of 60,000 shares of stock of the new corporation to the public and in August 1937 an agreement with the brokers was made under which the brokers, as agents, offered to the public in October 1937 and later sold 60,000 shares.

In July 1937 the president and the secretary of Technicraft executed two separate assignments of Technicraft's assets to the new corporation. Technicraft's board of directors, by a resolution on August 27, 1937, directed the transfer of its assets. The assets were actually transferred at various times when the necessary documents were filed and recorded. On Technicraft's books the transfer of all the assets was recorded as of August 31, 1937. Technicraft's books in 1937 showed net profits for the months through August, before adjustments for taxes, as follows:

Five months ended May 31	$ 65,270.52
June	16,861.44
July	16,873.36
August	13,598.76
Total	112,604.08

In 1937 Technicraft's balance sheets at the end of each month from May through August showed total assets in excess of total liabilities as follows:

May 31	$135,052.52
June 30	151,913.96
July 31	168,787.32
August 31	155,660.84

On October 22, 1937, a certificate of winding up and dissolution of Technicraft, stating that the corporation had been completely wound up, that all of its known assets had been distributed, and that taxes and all other known debts and liabilties had been paid or provided for, was filed by its directors with the Secretary of State of the State of California.

Technicraft filed its corporation income and excess profits tax returns on Form 1120 for 1934 on or about March 15, 1935; for 1935, [46] on or about March 15, 1936; for 1936, on or about March 15, 1937; and for 1937, on or about March 15, 1938.

Technicraft's return for 1934 reported gross income from royalties of $27,125.23 and total deductions of $11,392.24, leaving a net income of $15,732.99. Its return for 1935 reported "gross profits where inventories are not an income determining factor", $69,577.19, and discounts, $13.90, making

a total gross income of $69,591.09. Total deductions were taken on the return of $21,562.89, leaving net income of $48,028.20. Its return for 1936 reported gross income from interest, $822.01; rents, $2,500; and from royalties, $145,113.73; discounts, $92.08, making a total gross income of $148,527.82. From this gross income, total deductions of $37,067.31 were taken, leaving net income of $111,460.51. Its return for the year 1937, covering the period from January 1 to August 31, 1937, showed gross income from interest, $225.98; rents, $8,000; royalties, $157,932.24; and discounts $42.19, making gross income of $166,200.41. From this gross income, deductions were taken of $46,768.17, leaving net income of $119,432.24.

Technicraft, in its return for 1934, stated it was in the engineering business; in its 1935 return stated its business was "engineering development"; in its 1936 return stated its business was "research and engineering"; and on its 1937 return stated its business was "research and engineering."

Technicraft did not file personal holding surtax returns on Form 1120 H for either 1934, 1935, 1936, or 1937.

Technicraft's income tax returns were prepared by its accountant or his assistants and were signed by Wells as president and by Technicraft's secretary. The accountant, in addition to his work as a certified public accountant, also engaged in tax work and gave Technicraft his opinion that it was not a personal holding company. He had confer-

ences with representatives of the Bureau of Internal Revenue and gave them access to Technicraft's books and records. On June 19, 1937, Technicraft received a refund of $278.37 in respect of income and excess profits taxes paid by it for 1935 and at that time the Commissioner made no claim that Technicraft was a personal holding company.

It is stipulated that petitioner Lane-Wells Co. is liable as a transferee for any taxes which may be found to be due from Technicraft.

OPINION.

Black:

Issues (a) and (b).—These two assignments of error raise essentially the same issue, which is that the Commissioner erred in his determination in the notice of deficiency that Technicraft was [47] a "personal holding company" as defined in section 351 (b) (1) of the Revenue Acts of 1934 and 1936, and section 352 (a) of the Revenue Act of 1936 as amended by section 1 of the Revenue Act of 1937,[1]

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[1] Sec. 351. Surtax on Personal Holding Companies.

* * * * * * *

(b) Definitions.—As used in this title—

(1) The term "personal holding company" means any corporation * * * if—(A) at least 80 per centum of its gross income for the taxable year is derived from royalties, * * * and (B) at any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals. * * *

Sec. 352. Definition of Personal Holding Company.

(a) General Rule.—For the purposes of this

and that it was subject to the surtax imposed by section 351 (a) of the Revenue Act of 1934 and 1936 and by section 351 of the Revenue Act of 1936 as amended. Petitioners contend that the amounts of Technicraft's income designated on its income tax returns as "royalties" were in fact compensation for tangible services rendered to affiliated corporations and did not constitute "personal holding company" income.

All of the license agreements in evidence apply to the term "royalty" to the amounts paid to Technicraft thereunder, although the terms of the licenses vary as to the exact nature of the consideration for which the payments were made. Technicraft granted to the Lane-Wells Co. of California merely "any and all rights, privileges and remedies" which Technicraft "might or could do, exercise or perform" under the assignment of the exclusive license to use and sell devices, embodying the Mims patent, but it is quite clear from the language of the other two license agreements that the "royalty payments" thereunder were not confined to receipts from the use of the Mims patent alone.

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title and of Title I the term "personal holding company" means any corporation if—

(1) Gross Income Requirement.—At least 80 per centum of its gross income for the taxable year is personal holding company income as defined in section 353; * * *

(2) Stock Ownership Requirement.—At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

Under each of the license agreements with the Lane-Wells Co. of Oklahoma and the Lane-Wells Co. of Texas, Technicraft granted a nonexclusive license "to make or purchase for the Licensee's own use only, and to use but not to sell, rent, or lease to others said Perforators." In those agreements the term "perforators" was broadly defined "to mean not only the patent specifically mentioned hereinbefore, but also any and all inventions, applications, patents and any continuations, divisions, and or reissues thereof and whether in the nature of apparatus or processes which the licensor now owns or controls or which it may at any time durin the life of this agreement own or control and which [48] relate or are accessories to said Perforators." The agreements provided that "The royalty payments on the Patent Rights herein licensed shall be fifteen percent (15%) of the gross receipts; minimum royalties shall be not less than Seven Hundred and Fifty dollars ($750.00) per month", that "The term 'Patent Rights' shall be construed to embrace as a group all the patents and applications herein specified or referred to or implied", and that "The term 'gross receipts' shall be construed to mean the total receipts derived in any manner whatsoever from the manufacture and/or use of any and all apparatus or processes covered by said Patent Rights without deductions of any kind or character."

Under the license agreements with the Lane-Wells Co. of Texas and the Lane-Wells Co. of Oklahoma, Technicraft was the grantor of the pat-

ents and applications used by the Lane-Wells companies. The payments received by it were proportionate to the use of the patents and applications, since the payments were 15 percent of the gross receipts from any and all inventions, applications, and patents which related or were accessories to the perforators. The payments thus fall clearly within the definition of "royalty" given in Black's Law Dictionary, 3d. ed., as "A payment reserved by the grantor of a patent, lease of a mine, or similar right, and payable proportionately to the use made of the right by the grantee." This definition is well supported by authority. Western Union Telegraph Co. v. American Bell Telephone Co., 125 Fed. 342; In re Elsner's Will, 206 N. Y. S. 765; Bellport v. Harrison, 123 Kans. 310; 255 Pac. 529 Volk v. Volk Manufacturing Co., 101 Conn. 594; 126 Atl. 847; Kiesau Petroleum Corporation, 42 B. T. A. 69.

It seems clear that some of the payments made to Technicraft were not covered by express license agreements. For example, Technicraft had no license agreement at all with Lane-Wells International, Inc., although it collected 15 percent of that corporation's gross receipts from gun perforation. In February 1937 Technicraft's agreements with the Lane-Wells Co. of Texas and the Lane-Wells Co. of Oklahoma expired, but those corporations continued to pay to Technicraft 15 percent of their gross receipts from gun perforation. The facts further show that on June 1, 1937, Technicraft was

furnishing the Lane-Wells companies with from 85 to 100 patents or patent applications, of which only 7 or 8 related to the basic principle of the Mims patent.

In their argument that the payments in question did not constitute royalties, petitioners rely on Kiesau Petroleum Corporation, supra, wherein a certain percentage of the proceeds from the sale of oil received by a taxpayer under contracts with lessees of oil producing [49] land in return for equipment was held not "derived from royalties" within the meaning of section 351(b) (1) of the Revenue Acts of 1934 and 1936 and the taxpayer was held not to be a personal holding company. The Board held that under the contracts the taxpayer "did not reserve an interest in the oil producing properties; it acquired such an interest for the first time." The instant case is clearly distinguishable, since Technicraft had an interest in patents and applications and under the license agreements "reserved" an interest rather than "acquiring" it for the first time, and in those cases where there were no license agreements it seems clear that the nature of the income was the same.

Petitioners also rely upon Affiliated Enterprises, Inc., 42 B. T. A. 390, wherein the taxpayer operated a sales promotion plan, known as "bank night", which was not and could not be patented or copyrighted, except for some instruction sheets which were copyrighted. The taxpayer provided a few simple articles to execute the idea, derived

income in the form of a flat sum weekly payment from "license agreements" with theatre operators, and was held not to be a personal holding company, since its income was not derived from royalties. The case is distinguishable in that Technicraft owned patents and applications, many of which were patentable, and received not a flat sum, but 15 percent of the gross receipts derived by each Lane-Wells company from the use of such patents and applications in gun perforation. Morever, it has been held that the term "royalty" may be applied to receipts derived in respect of nonpatentable improvements. Volk v. Volk Manufacturing Co., supra.

Petitioners have not shown what portion of Technicraft's income, if any, was derived from engineering services or from nonpatentable devices, as distinguished from patents, and they have not shown the amounts derived under the written license agreements, as distinguished from the amounts received from Lane-Wells International, Inc., and from the Lane-Wells Co. of Texas and the Lane-Wells Co. of Oklahoma after the written license agreements had expired in February 1937. Although Technicraft furnished the Lane-Wells companies with from 85 to 100 patents or applications, of which only 7 or 8 related to the basic principle of the Mims patent, petitioners have not shown what portion of the amounts received by Technicraft was consideration for patents related to the basic principle of the Mims patent. The facts

show that on its books for all the years involved and on its income tax returns for 1934, 1936, and 1937, Technicraft treated the payments made to it as royalties. We agree, of course, with petitioners that merely calling these receipts "royalties" in the license agreements and on petitioner's books would not make them "royalties" if, in fact, the evidence showed that they were some- [50] thing else. However, for reasons already stated, we think these payments were "royalties" within the meaning of the applicable revenue act.

These amounts did not constitute royalties merely to the extent of an amount equal to the $200 per month paid by Technicraft for the Mims patent, as petitioners suggest, since the payments to Technicraft were not made solely for the use of the Mims patent, which by itself was not very valuable. It was the improvements and developments to the basic Mims patent, conceived and carried out by Technicraft, which made its use of great value. Manifestly the chief business purpose of Technicraft was to improve and develop the Mims patent and other patents and devices used in the oil business by the Lane-Wells companies. For the use of these patents and devices and their improvements, it received 15 percent of the gross receipts of the different Lane-Wells companies which they in turn received from the gun perforating business. These were none the less royalties, we think, even though they were not received in anything like their entirety for the use of the basic Mims patent.

Therefore, the payments received by Technicraft must be held to be "royalties" within section 351 (b) (1) of the Revenue Acts of 1934 and 1936, and, since petitioners do not contest the fact that Technicraft otherwise falls within the definition of a "personal holding company" for the taxable years 1934, 1935, and 1936, the respondent's position as to those years is sustained. Logan Coal & Timber Association, 42 B. T. A. 529. The payments were also "royalties" within section 353 (a) of the Revenue Act of 1936, as amended by section 1 of the Revenue Act of 1937, but an additional objection is raised by petitioners in respect of taxability for 1937.

Issues (i) and (j).—Petitioners contend that even if Technicraft be considered a personal holding company in the years 1934 through 1936, it could not have been a personal holding company in 1937 "for the reason that during the latter half of 1937, it had neither assets nor income, and 50% or more of its stock was not held by less than five individuals or their families."

Section 352 (a) of the Revenue Act of 1936, as amended by section 1 of the Revenue Act of 1937, includes in the definition of a "personal holding company" any corporation if at least 80 percent of its gross income is personal holding company income and, in addition:

> At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or

indirectly, by or for not more than five individuals.

The question in issue hinges upon the meaning of "at any time during the last half of the taxable year." Section 357 of the Revenue Act of 1936, as amended, provides that "The terms used in this title [51] shall have the same meaning as when used in Title I", and section 48 of Title I of the Revenue Act of 1936 provides, in part:

> When used in this title—
>
> (a) "TAXABLE YEAR.—"Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this Part. "Taxable year" includes, in the case of a return made for a fractional part of a year under the provision of this title or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

Technicraft's income tax return for 1937 was filed for the period which began January 1, 1937, and ended August 31, 1937. If "the taxable year", for purposes of determining whether Technicraft falls within the definition of a "personal holding company" in section 352 (a) of the Revenue Act of 1936, as amended, is held to be the fractional part of a year from January 1, 1937, to August 31, 1937, for which the income tax return was filed, then Technicraft falls within the statutory defini-

tion of a "personal holding company", since at least as late as May 31, 1937, more than 50 percent of Technicraft's outstanding stock was owned directly, or indirectly, by or for not more than five individuals.

But no personal holding company return appears to have been filed by Technicraft and the parties in arguing this point in their briefs appear to have considered the taxable year in question as the calendar year ended December 31, 1937. The deficiency notice determined personal holding company surtax liability "for the taxable years ended * * * December 31, 1937" and, in the explanation of adjustments to net income, stated:

> The return filed for the taxable year purports to account for the taxable income for the period from January 1 to August 31, 1937; after which latter date the business of your corporation was taken over and its activities conducted by Lane-Wells Company, pursuant to an agreement for reorganization entered into on or about June 1, 1937.
>
> The contention made in your protest, that the said return erroneously accounted for income accruing after June 1, 1937 which should have been returned by the successor corporation, is denied for the reason that the transfer of your assets and business was not effected at the time indicated in your protest and the items of income and deduction involved were properly reflected in your books and return.

In Technicraft's petition the taxable year is treated as ending December 31, 1937, and petitioner alleged as a fact that its "last taxable year was the calendar year 1937."

If the entire calendar year 1937 is treated as "the taxable year" in this case, Technicraft meets the requirements for a "personal holding company" as set forth in section 352 (a), as amended, since the facts clearly show that Technicraft continued to exist as a corporation and had stock outstanding in the names of Lane and Wells [52] and their wives up until July 29, 1937. The reorganization agreement whereby the stock of Technicraft and the other corporations owned by Lane and Wells and their wives was to be transferred to the Lane-Wells Co., the Delaware corporation, in return for shares of its stock was signed June 1, 1937. It was not until July 22, 1937, however, that a permit was granted by the State Corporation Department of California authorizing the Delaware corporation to issue its stock. The actual issuance took place a week later, July 29, 1937. At that time Technicraft issued a new certificate of its shares to the Delaware corporation. Not until that date was there a reorganization. National Iron Works, 22 B. T. A. 382; A. T. Evans, 30 B. T. A. 746.

The instant case is clearly distinguishable on its facts from Novo Trading Corporation v. Commissioner, 113 Fed. (2d) 320, urged as an authority by petitioners, wherein liquidation of a corporation was held effected so that refunds of import

duties were not taxable to it although the certificate of dissolution which had been executed was never filed with the Secretary of State, since in that case at the time in question all the stock certificates had been canceled on the corporation's books and the corporation had completely ceased business activities.

On the facts we hold that the Commissioner did not err in his determination that petitioner was a personal holding company for the year 1937. This disposes of assignment of error (i) adversely to the contention of petitioners. It likewise disposes of assignment of error (j) adversely to petitioners because that issignment of error is based upon the same contention as is made in support of assignment of error (i).

Issues (g) and (h).—In the notice of deficiency the Commissioner stated:

> The further contention raised in your protest, that you should be allowed a further dividends paid credit (not claimed in your return) on account of assets distributed in complete liquidation, is denied for the reason that Article 27 (f)-1 of Regulations 94 provides that no such credit is allowable in respect of non-taxable distributions.

Petitioners contend that, even if Technicraft could be construed to be a personal holding company, it nevertheless was entitled to a dividends paid credit for amounts distributed at the time of

its reorganization to the extent that such distribution represented earned surplus, and that of the amounts distributed in the liquidation of Technicraft not less than $65,814.75 was properly chargeable to earnings and profits accumulated subsequent to February 28, 1913, and that it has overpaid its surtax on undistributed profits for 1937 in the sum of $10,248.87. [53]

As we have already stated, all of Technicraft's assets were transferred in 1937 to the Lane-Wells Co. of Delaware, its sole stockholder, and both parties agree that there was a tax-free reorganization under section 112 (b) (6) of the Revenue Act of 1936. The parties agree that the question in issue depends upon whether subsection (f) of section 27 of the Revenue Act of 1936[2] is limited by subsection (h)[3] in computing the "dividends paid credit" which is to be deducted under section 355 of the Revenue Act of 1936, as amended by sec-

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[2](f) Distribution in Liquidation.—In the case of amounts distributed in liquidation the part of such distribution which is properly chargeable to the earnings or profits accumulated after February 28, 1913, shall, for the purposes of computing the dividends paid credit under this section, be treated as a taxable dividend paid.

[3](h) Nontaxable Distributions.—If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this title for the period in which the distribution is made, no dividends paid credit shall be allowed with respect to such part.

tion 1 of the Revenue Act of 1937, from "adjusted net income" to determine the "undistributed adjusted net income" subject to surtax under section 351 of the Revenue Act of 1936, as amended.

In Credit Alliance Corporation, 42 B. T. A. 1020, the Board decided a similar question in accordance with the views of petitioners in this case and we now follow that decision. On the issue raised by these assignments of error, the Commissioner's determination was in error, but cf.. Centennial Oil Co. v. Thomas, 109 Fed. (2d) 359; certiorari denied, 309 U. S. 690.

From petitioner's exhibit 28, introduced in evidence by agreement between the parties, Technicraft's earned surplus, at the time of its merger with the Lane-Wells Co. of Delaware, August 31, 1937, was $55,660.84 and not $65,814.75 as alleged in its assignment of error. The correct amount of Technicraft's earned surplus transferred to the Lane-Wells Co. of Delaware in the reorganization should be used in a recomputation under Rule 50.

Issues (e) and (f).—Petitioners in assignments of error (e) and (f) contend that the three-year period of limitations contained in section 275 (a) of the Revenue Act of 1934 has run for the years 1934 and 1935. The facts show that on March 15, 1935, and March 16, 1936, respectively, Technicraft filed its corporation income and excess profits tax returns on Form 1120 for the calendar years 1934 and 1935, respectively. These returns appear to be full and complete, aside from some minor adjust-

ments which the Commissioner made in his determination of the deficiencies. Technicraft answered "No." to the following question appearing on the face of both returns:

> Is the corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1934?—(If so, an additional return on Form 1120H must be filed.)

[54]

Technicraft did not file any returns on Form 1120H because, in good faith, it did not believe it was a personal holding company.

The respondent's deficiency notice is dated June 1, 1939, which is over four years and two months after the 1934 return was filed on Form 1120 and over three years and two months after the 1935 return was filed on Form 1120. He contends that the statute never commenced to run, for the sole and only reason that no returns were filed on Form 1120 H, and relies upon section 276 (a) of the Revenue Act of 1934, which provides that in the case "of a failure to file a return the tax may be assessed * * * at any time."

Section 275 (a) of the Revenue Act of 1934 provides that the tax imposed by Title I "shall be assessed within three years after the return was filed * * *." Section 351 (c) provides:

> (c) Administrative Provisions.—All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the

provisions of section 131 of that title shall not be applicable.

Article 351-8 of Regulations 86, promulgated under the Revenue Act of 1934, in so far as is material, provides:

> Art. 351-8. Return and payment of tax.—A separate return is required for the surtax imposed under Section 351. Such return shall be made on Form 1120H. * * * The same provisions of law relating to the period of limitation for assessment and collection which govern the taxes imposed by Title I also apply to the surtax imposed under Title IA. However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitation for assessment of the surtax imposed by Title IA. If the corporation subject to section 351 fails to make a return, the tax may be assessed at any time. * * * The administrative provisions applicable to the surtax imposed by section 351 are not confined to those contained in Title I but embrace all administrative provisions of law which have any application to income taxes.

The returns filed on Form 1120 were made under Title I.

Petitioner, in support of its contention that the statute has run, relies upon Germantown Trust Co.

v. Commissioner, 309 U. S. 304. In that case a trustee in charge of a certain fund filed a return as a trust on Form 1041. After the statute had run for assessing an additional tax against the trust, the Commissioner determined that the fund was an association taxable as a corporation and that, since no return had been filed on Form 1120 as an association taxable as a corporation, as required by section 52 of the Revenue Act of 1932 and article 391 of Regulations 77, he was not barred from assessing the determined deficiency against the trustee in charge of the fund. The Supreme Court held that the return on Form 1041 was a return within the meaning of section 275 (a) of the Revenue Act of 1932, [55] and that the proposed deficiency in that case was barred by the statute of limitations. Among other things, the Court said:

> The respondent's contention is that where a fiduciary, in good faith, makes what it deems the appropriate return, which discloses all of the data from which the tax, treated as one imposed upon an association (classified as a corporation under the statute), can be computed, such a return is to be deemed no return. We think this view inadmissible.
>
> It cannot be said that the petitioner, whether treated as a corporation or not, made no return of the tax imposed by the statute. Its return may have been incomplete in that it failed to compute a tax, but this defect falls short of rendering it no return whatever.

At the conclusion of the foregoing language the Court in a footnote cited the following cases: Zellerbach Paper Co. v. Helvering, 293 U. S. 172; Commissioner v. Stetson & Ellison Co., 43 Fed. (2d) 553; United States v. Tillinghast, 69 Fed. (2d) 718; Abraham Werbelovsky, 8 B. T. A. 442; F. M. Stearns, 16 B. T. A. 889; J. R. Brewer, 17 B. T. A. 704.

We think the instant case is distinguishable from the Germantown Trust Co. case, supra. In that case both the returns on Form 1041 and 1120 dealt with in the opinion were what might be properly termed Title I returns. The tax involved was a Title I income tax. In the instant case the tax involved is a Title IA tax. Treasury Regulations 86, article 351-8, above quoted, states:

> * * * However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitation for assessment of the surtax imposed under Title IA.

Is the above regulation a valid one? We think it is. In Blenheim Co., Ltd., 42 B. T. A. 1248, we held that the taxpayer was liable for a delinquency penalty of 25 percent in income tax deficiency for failure to file a return on Form 1120 for the normal income tax, although it had filed a return on Form 1120 H as a personal holding company. In that case, among other things, we said: "Clearly,

the normal and surtax here in dispute are separate and distinct taxes. Revenue Act of 1934, Title I, Title I-A * * *."

In Will County Title Co., 38 B. T. A. 1396, the Commissioner determined a deficiency in income tax for 1934 and an overassessment of excess profits tax greater than the amount of the deficiency in income tax, thus making a net overassessment of the two taxes. On these facts we held that the petition for redetermination was within our jurisdiction in so far as it pertained to the deficiency in income tax, but not as to the overassessment in excess profits tax. We based our decision upon the fact that "the two taxes are imposed by entirely separate provisions of the statute", the income tax by Title I and the [56] excess profits tax by Title V, and are separate and distinct taxes. To the same effect is Hobbs Western Co., 43 B. T. A. 5.

If the question of our jurisdiction is determined under certain circumstances by the character of the tax, then it is difficult to see how a return filed on Form 1120 under Title I of the Revenue Act of 1934 would start the running of the statute of limitations as to a separate and distinct tax imposed by Title IA of the Revenue Act of 1934, where no return has been filed by the taxpayer on Form 1120 H, as required by the Treasury regulations. The two returns are quite different, as poitned out by us in Blenheim Co., Ltd., supra.

We, therefore, hold that, since Technicraft did not file personal holding company returns on Form

1120 H, the statute of limitations has not run and the deficiencies in personal holding company surtax for the years 1934 and 1935 are not barred by the statute of limitations.

Issues (c) and (d).—In the notice of deficiency the Commissioner added a 25 percent penalty for each year as "mandatory" under section 291 of the Revenue Act of 1934, section 406 of the Revenue Act of 1935, and section 291 of the Revenue Act of 1936, for failure to file a personal holding company return.

Petitioners contend that this was error and that, although no personal holding company returns were filed on Form 1120 H, the returns filed contained all the necessary data to enable the Commissioner to compute petitioners' liability for personal holding company surtax. In making this contention, petitioners also rely on Germantown Trust Co., supra, above discussed in connection with the statute of limitations issue. We think our discussion under the statute of limitations issue is equally applicable here.

In the Board's recent decision in Olean Times Publishing Co., 42 B. T. A. 1277, among other things, we said:

> Petitioner filed no personal holding company return, and hence the penalty of 25 percent imposed by the Revenue Act of 1936, section 291, is mandatory. Reasonable cause is only effective to avoid the penalty if the return is delayed—not when the return is omitted en-

tirely, Alex Holmstrom, 35 B. T. A. 1092; dismissed, 94 Fed. (2d) 747; National Contracting Co. v. Commissioner, 105 Fed. (2d) 488. This is true as to a personal holding company return even though an income tax return has been filed, Collateral Mortgage & Investment Co., 37 B. T. A. 630; Rotorite Corporation, 40 B. T. A. 1304 (on review C. C. A., 7th Cir.); Lone Pine Lawn Corporation, 41 B. T. A. 638 (on review C. C. A., 2d Cir.).

On the issue as to delinquency penalties, we sustain the Commissioner. See Noteman v. Welch, 108 Fed. (2d) 206.

Issue (k).—Petitioners do not press issue (k) in their brief and it will be considered as abandoned. This assignment of error raised the issue that the Commissioner was estopped by his past acts and conduct from asserting any claim of liability against Technicraft for [57] surtax on personal holding company or penalties thereon. Even if the issue be not considered as abandoned, it is clear that the evidence in the record does not sustain it. There is nothing to show that the Commissioner is estopped.

Reviewed by the Board.

Decision will be entered under Rule 50.

Van Fossan, dissenting:

I believe this case is controlled by the decision of the Supreme Court in Germantown Trust Co. v. Commissioner, 309 U. S. 304. [58]

[Title of Board and Cause.]

Docket Nos. 99829, 99830. Promulgated September 25, 1941.

In determining that part of a distribution in liquidation which is "properly chargeable to the earnings or profits accumulated after February 28, 1913" as that term is used in section 27 (f) of the Revenue Act of 1936, held, that all liabilities, including Federal income and surtaxes and penalties, which are proper accruals must first be accrued and deducted from such earnings or profits accumulated after February 28, 1913; held, further, that the Commissioner is in error in contending that the deficiency and penalty which he has determined against petitioner for 1937 should be accrued and deducted from such earnings and profits when, in fact under the Board's decision, there will be no deficiency and penalty for 1937 but on the contrary there will be an overassessment.

Raphael Dechter, Esq., for the petitioners.

E. A. Tonjes, Esq., and Alva C. Baird, Esq., for the respondent.

SUPPLEMENTAL OPINION

Black:

This is a reconsideration of issues (g) and (h) of our report promulgated January 31, 1941, in the

above entitled proceedings. See 43 B. T. A. 463. In this report we said in part:

> From petititoner's exhibit 28, introduced in evidence by agreement between the parties, Technicraft's earned surplus, at the time of its merger with the Lane-Wells Co. of Delaware, August 31, 1937, was $55,660.84 and not $65,-814.75 as alleged in its assignment of error. The correct amount of Technicraft's earned surplus transferred to the Lane-Wells Co. of Delaware in the reorganization should be used in a recomputation under Rule 50.

In our findings of fact we made a finding that Technicraft's balance sheets showed total assets in excess of total liabilities on August 31, 1937, of $155,660.84. The evidence for this finding was petitioner's [59] Exhibit 28, which also showed such net assets of $155,660.84 to be represented by or made up of the following items:

Capital stock	$25,000.00
Appropriated surplus	75,000.00
Surplus account before charging dividends	10,060.47
Income account—year to date	85,600.37
Dividends	(40,000.00)
	155,660.84

In our report promulgated January 31, 1941, we arrived at Technicraft's earned surplus of $55,-660.84 by taking the net result of the last three items shown in the immediately preceding paragraph. If "Technicraft's earned surplus, at the time of its merger with the Lane-Wells Co. of

Delaware, August 31, 1937" were at least the amount of $65,814.75, it would not be liable under Credit Alliance Corporation, 42 B. T. A. 1020; affd., —— Fed. (2d) —— (July 21, 1941), for the calendar year 1937 for any surtax on undistributed profits under section 14 of the Revenue Act of 1936 or for any surtax on personal holding companies under section 351 of the Revenue Act of 1936 as amended by section 1 of the Revenue Act of 1937, and, instead of deficiencies for 1937 of $1,196.80 and $40,992.05 and a penalty of $10,248.01, as determined by respondent, there would be an overassessment for that year. That this is true is demonstrated by the fact that the parties agree that Technicraft's net income for 1937 is $123,123.24; that its normal tax for 1937 is $17,308.39; that the tax previously assessed for 1937 was $27,003.71; and that it is entitled to a dividends paid credit (exclusive of any earned surplus on August 31, 1937) of $40,000. See sec. 14 (a) and (b), Revenue Act of 1936, and sec. 1, Revenue Act of 1937. In other words, if for 1937 Technicraft's "dividends paid credit" is the amount of $105,814.75 instead of $40,000, it will owe no surtaxes for that year, as the following computation illustrates:

Surtax on Undistributed Profits

Net income	$123,123.24
Minus normal tax, sec. 14 (a) (1) (A)	17,308.49
Adjusted net income	105,814.75
Minus dividends paid credit, sec. 14 (a) (2)	105,814.75
Undistributed net income	None

Surtax on Personal Holding Companies

Net income	$123,123.24
Deduct: Federal income tax, sec. 356(a)(1)	17,308.49

[60]

Adjusted net income	$105,814.75
Minus dividends paid credit, sec. 355 (a)	105,814.75
Undistributed adjusted net income	None

Was Technicraft's earned surplus at the time of its merger with the Lane-Wells Co. of Delaware on August 31, 1937, at least the amount of $65,814.75?

On May 12, 1941, we granted at the request of both parties a "Joint Motion to Open Record and for the Introduction of Further Evidence." The purpose of the evidence to be introduced was to show the amount of petitioner's earned surplus at the time it transferred its assets to the Lane-Wells Co., in liquidation, in 1937. On May 29, 1941, the parties filed the following stipulation of facts:

It is hereby stipulated and agreed, by and between the parties hereto, through their respective attorneys, that:

1. The item of $75,000.00, appearing on Petitioners' Exhibit 28, being a "Statement of assets and liabilities as shown by the books of

Technicraft Engineering Corporation as at May 31, 1937, June 30, 1937, July 31, 1937, and August 31, 1937," and described as "appropriated surplus" was set up out of the earnings of Technicraft Engineering Corporation.

2. The said Petitioners' Exhibit 28 does not reflect the liability of the Technicraft Engineering Corporation for the taxes in controversy herein; and the surplus as reflected by said Exhibit 28 has not been reduced by any amount on account of the said taxes in controversy herein, and the books of the said Technicraft Engineering Corporation do not show any reserve for the taxes in controversy.

Upon the basis of this stipulation both parties agree in their briefs that the appropriated surplus of $75,000 should be added to the earned surplus of $55,660.84 determined by the Board, thus making as a starting point an earned surplus of $130,660.84. From this amount, the respondent contends, there should be subtracted as a liability not reflected by Exhibit 28 all the taxes and penalties which he has determined in his deficiency notice in the total amount of $74,625.59, thus bringing the earned surplus down to $56,035.25. Petitioner concedes that the $130,660.84 should be reduced by the taxes and penalties for the years 1934, 1935, and 1936, which in no event will exceed $22,210.55, which would bring the earned surplus down to $108,450.29, or $42,635.54 in excess of the amount of $65,814.75. The amount of $65,814.75 was the

sum which the Commissioner determined as petitioner's undistributed income for the year 1937.

Petitioner contends that there should not be any reduction in its earned surplus on account of 1937 taxes because there will be no deficiency under the Board's decision for that year, but that on the contrary there will be an overassessment. It seems clear that this [61] is true. Under the decision of the Board, following Credit Alliance Corporation, supra, petitioner will be entitled to a dividends paid credit, under section 27 (f) of the Revenue Act of 1936, of more than the Commissioner has determined to be its undistributed profits for 1937. Cf. Commissioner v. Kay Manufacturing Co., —— Fed. (2d) —— (Aug. 5, 1941). Therefore, since it is true that there will be no deficiency against petitioner for the year 1937, it follows that its earned surplus should not be reduced by the accrual of any additional tax liability for that year. On this point we sustain petitioner.

Therefore, we find as a fact that Technicraft's earned surplus, at the time of its merger with the Lane-Wells Co. of Delaware, on August 31, 1937, was at least the amount of $108,450.29 and that this surplus represented earnings and profits accumulated after February 28, 1913.

Issues (g) and (h) of our report promulgated January 31, 1941, are modified accordingly.

Decision will be entered under Rule 50. [62]

United States Board of Tax Appeals
Washington

Docket No. 99829.

LANE-WELLS COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the opinion of the Board promulgated January 31, 1941 and the supplemental opinion of the Board promulgated September 25, 1941, the respondent herein on October 22, 1941 having filed a recomputation of tax and the petitioner's counsel on November 4, 1941 having filed objections to the computation of the respondent and also having filed a recomputation statement of its own, and the said objections and recomputation statement having been duly considered, now, therefore, it is

Ordered and Decided: That there is no income tax or penalty liability against petitioner as transferee of Technicraft Engineering Corporation, Transferor, for the calendar year 1937; and that there are liabilities against petitioner as transferee of Technicraft Engineering Corporation, Transferor, in personal holding company surtax and penalties for the calendar years 1934, 1935, 1936 and 1937 as follows:

Year	Liability in tax	25% Penalty
1934	$3,178.80	$ 794.70
1935	9,474.53	2,368.63
1936	5,115.11	1,278.78
1937	None	None

Inasmuch as we have this day determined an overpayment of income tax for the year 1937 in favor of the transferor corporation, Technicraft Engineering Corporation, of $9,695.22, which amount was paid within three years before the filing of the petition (section 809(a), Revenue Act, 1938), petitioner's liability as transferee for the foregoing deficiencies and penalties is reduced by a proper credit of the foregoing overpayment. See section 322, Revenue Act, 1936. It is accordingly adjudged that petitioner is liable as transferee for the resulting balances due, after proper allowance of such credit, plus interest as required by law.

[Seal] (Signed) EUGENE BLACK,
Member.

Enter:

Entered Nov. 19, 1941. [63]

United States Board of Tax Appeals
Washington

Docket No. 99830

TECHNICRAFT ENGINEERING CORP.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the opinion of the Board promulgated January 31, 1941 and the supplemental opinion of the Board promulgated September 25, 1941, the respondent herein on October 22, 1941 having filed a recomputation of tax and the petitioner's counsel on November 4, 1941 having filed an agreement to such recomputation, now, therefore, it is

Ordered and Decided: That there is an overpayment of income tax for the calendar year 1937 in the amount of $9,695.22, which amount was paid within three years before the filing of the petition (Sec. 809 (a), Revenue Act of 1938), and no penalty due for said year 1937; and that there are deficiencies in personal holding company surtax and penalties for the calendar years 1934, 1935, 1936 and 1937 as follows:

Year	Deficiency in tax	25% Penalty
1934	$3,178.80	$ 794.70
1935	9,474.53	2,368.63
1936	5,115.11	1,278.78
1937	None	None

[Seal] (Signed) EUGENE BLACK
Member.

Enter:

Entered Nov. 19, 1941. [64]

United States Circuit of Appeals
For the Ninth Circuit

B. T. A. Docket No. 99829

LANE-WELLS COMPANY,
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

PETITION FOR REVIEW BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

I.

JURISDICTION

Now comes Lane-Wells Company, a Delaware corporation, by Raphael Dechter, its attorney, and respectfully shows:

That petitioner is a corporation which was organized under and is existing under the laws of the State of Delaware, and which has its principal office at 5610 South Soto Street, Los Angeles, California, hereinafter referred to as "taxpayer". It is agreed that petitioner is the transferee of and successor in interest of Technicraft Engineering Corporation, a dissolved California corporation, hereinafter sometimes referred to as "Technicraft".

The Respondent is the duly qualified and acting

Commissioner of Internal Revenue of the United States, herein referred to as [65] the "Commissioner".

The taxpayer's transferor filed income tax returns for the taxable years 1934, 1935, 1936 and 1937 with the Collector of Internal Revenue for the Sixth Collection District of the State of California, whose office is located within the Ninth Judicial Circuit wherein the taxpayer's transferor did reside.

The Commissioner determined deficiencies in personal holding company surtax and penalties for the years 1934, 1935, 1936 and 1937 against the taxpayer as transferee of Technicraft, as follows:

Year	Surtax	Penalty
1934	$3,178.80	$ 794.70
1935	9,474.53	2,368.63
1936	5,115.11	1,278.78
1937	40,992.05	10,248.01

The Commissioner also determined an overassessment of $21.82 in income tax for 1936 and a deficiency of $1,196.80 in income tax for 1937. On June 1, 1939, in accordance with the applicable statute, the Commissioner sent to the taxpayer by registered mail a notice of said deficiency.

Within ninety days thereafter the taxpayer filed a petition for a redetermination of said liability with the United States Board of Tax Appeals. Said case was consolidated for hearing and decision with the appeal of Technicraft Engineering Corp., in U. S. Board of Tax Appeals, Docket No. 99830, and both cases were simultaneously heard by the Board. On January 31, 1941, the Board promulgated its

findings and opinion in said proceeding; on September 25, 1941, the Board promulgated a supplemental opinion modifying some of its former findings and conclusions; and on November 19, 1941, the Board entered a judgment and final order [66] of redetermination wherein and whereby it was ordered and decided that there is no income tax or penalty liability against the taxpayer or its transferor for the calendar year 1937; and that there are liabilities against the taxpayer and its transferor in personal holding company surtax and penalties for the calendar years 1934, 1935, 1936 and 1937, as follows:

Taxable year ended:	Surtax	Penalty 25%
12/31/34	$3,178.80	794.70
12/31/35	9,474.53	2,368.63
12/31/36	5,115.11	1,278.78

and that said liability for the foregoing deficiencies and penalties is to be properly reduced by a credit for overpayment of income tax for the year 1937 in the amount of $9,695.22.

II.

NATURE OF CONTROVERSY

The nature of the controversy is as follows: The Commissioner contends that during the calendar years 1934, 1935, 1936 and part of 1937, Technicraft was a personal holding company within the meaning of that term as defined in the Revenue Act. Up to June 1, 1937, all of the corporate stock of Technicraft was owned in equal amounts by four persons, to-wit: W. G. Lane, Hazel T. Lane (husband and

wife) and Walter T. Wells and Mary P. Wells (husband and wife). After June 1, 1937, on which date Technicraft was merged in a reorganization with several other companies similarly owned by the same parties, all of Technicraft's stock was owned by Lane-Wells Company, a Delaware corporation. Technicraft was one of [67] five corporations, the stock of each of which was held in the same manner and in its entirety by Messrs. Wells and Lane and their respective wives. At all times prior to the reorganization all of these corporations, with the exception of Technicraft, were engaged in the performance of various skilled, technical services in the oil industry, particularly the service of gun perforating. In addition to such rendition of services, all of these related corporations (except Technicraft) were engaged also in the manufacture and sale of various products used in the oil industry. At all times after March, 1934, at which time it commenced business operations, Technicraft was engaged in engineering, research, and development work.

When the business of their corporations was first launched, Messrs. Wells and Lane, both of whom were engineers, were cognizant of the necessity of keeping abreast with scientific developments in the oil industry as essential to the success of an oil service business. In December of 1932 they acquired an exclusive license to a patent from one, Sidney Mims, which patent had been issued in the year 1926 and had never proven itself commercially prac-

ticable. Foreseeing the need of scientific research and development on the process of gun perforating, which Mims had sought to develop, and seeing also the need of extensive scientific research and development on various other devices and processes in order to build a successful oil service business, Messrs. Wells and Lane, in December of 1932, agreed that they would set aside 15% of all their income from gun perforating, which 15% would be used to carry on the research, engineering and scientific development of Technicraft. Accordingly, Technicraft became a "laboratory" wherein patents or new processes or devices were secured, developed [68] and passed on to the other Lane-Wells Companies, which were engaged in services, manufacture and sale. In order to provide a convenient method of collecting the 15% of gun perforating income which was to constitute the research fund to be used by Technicraft for the benefit of the various Lane-Wells companies, license agreements were issued from Technicraft to Lane-Wells Company, a California corporation, Lane-Wells Co. of Oklahoma, an Oklahoma corporation, and Lane-Wells Co. of Texas, a Texas corporation. It was not the intention of the persons involved that these be true license agreements, but rather than that the execution of the license agreements constituted a bookkeeping means of providing Technicraft with reimbursement for engineering services rendered. The 15% gun perforating income was collected from Lane-Wells Co. of Oklahoma, Lane-Wells Co. of

Texas, and the entire system of engineering, research and development continued even after the license agreements had expired. Lane-Wells International, another of the related Lane-Wells companies, and which was organized in 1936, received the benefits of engineering development by Technicraft and paid 15% of its income, even without going through the formality of the execution of a similar license agreement.

As a result of scientific development and engineering research and development, gun perforating, which had been commercially impracticable under the Mims patent, became a very successful and profitable business. In addition to the developments in gun perforating, Technicraft engineers explored new fields of endeavor in the oil industry and developed and patented many new products, such as fishing magnets, packers, bridging plugs, packing glands, etc., and many new services such as Stratagraph, ex-raying of cable, underground surveys, etc., all of which were passed on without any [69] further charge to the various Lane-Wells Companies. Technicraft was not a mere depository for patents, but on the other hand, occupied a large building designed for engineering purposes, in which it carried on extensive and elaborate engineering functions. It had on its payroll many experienced engineers.

The Commissioner contends that Technicraft's income was royalty income within the meaning of the Personal Holding Company Act. The taxpayer contends that form must give way to substance and

that the income which Technicraft received as compensation for engineering services is not "royalty" income merely because it was paid through the artificial arrangement of patent license agreements. In the opinion and final decision of the board, the Commissioner's contention above is upheld.

The taxpayer contends that even if the income had been royalty income, Technicraft could not have been a personal holding company during the year of 1937, for the reason that during the latter half of the year 1937 it was no longer doing business, but all of its activities were carried on by the taxpayer as transferee. On June 1, 1937, all of the constituent Lane-Wells companies entered into a reorganization agreement whereby Lane-Wells Company, a Delaware corporation, which had been formed for such purpose, was to issue 250,000 shares of its stock to Messrs. Wells and Lane and their wives respectively, in exchange for all of the stock of the constituent corporations; that as of June 1, 1937, the new Delaware corporation was to take over all of the assets of the constituent corporations as of their value on June 1, 1937, and was to carry on the business of the various corporations. It was provided that the various constituent corporations were to be dissolved in due course. As a result of such agreement, Lane-Wells Company, a Delaware cor- [70] poration, took over the assets of Technicraft as of June 1, 1937, although the mechanics of the plan consumed several months before it was entirely and formally completed. The taxpayer

contends that the fact that formal completion of the reorganization was not consummated until subsequent to June 1, 1937, did not destroy the effectiveness of the agreement that it be given effect as of June 1, 1937, which was also the date of the execution of the reorganization agreement. The Commissioner contends that because the issuance of stock of the taxpayer was delayed due to delay in the issuance of a permit by the Corporation Commissioner of the State of California, that the reorganization cannot therefore be considered as effected as of June 1, 1937. In the opinion and final decision of the Board of Tax Appeals, the Commissioners' contention above is upheld.

As part of the reorganization of June 1, 1937, a sum of not less than $65,814.75, which was attributable to earned surplus was distributed with the remaining assets of Technicraft to Lane-Wells Company, a Delaware corporation. The taxpayer contends that it is entitled to dividends paid credit for this amount and the Commissioner contends that it is not. In the opinion and final decision of the Board of Tax Appeals, the taxpayer's contention above is upheld. No error on this phase of the Board's decision is hereby specified or alleged.

The taxpayer contended that the three years' statute of limitations barred assessments for the years 1934 and 1935. The Commissioner contended that the failure of Technicraft to file returns on Form 1120-H (personal holding company returns) prevented the statute of limitations from running. It

is conceded that the officers and agents of Technicraft believed in good faith that it [71] was not a personal holding company and, therefore said corporation did not file returns on Form 1120-H. Technicraft fully and completely reported all of its income on Form 1120. In the opinion and final decision of the Board, the Commissioner's contention above was upheld.

The taxpayer contended that the penalties of 25% for Technicraft's failure to file a personal holding company return on Form 1120-H, should not be assessed because Technicraft acted in good faith while the Commissioner contended that the assessment of such penalties was mandatory. In the opinion and final decision of the Board, the Commissioner's contention above is upheld.

III.

ASSIGNMENT OF ERRORS

In making its decision, as aforesaid, the United States Board of Tax Appeals committed the following errors, upon which your petitioner relies as the basis of this proceeding:

1. The Board erred in determining that the taxpayer's transferor was a personal holding company for the years 1934 to 1937, inclusive.

2. The Board erred in failing to determine that the amounts of Technicraft's income designated as royalty were in fact compensation for tangible services rendered to affiliated corporations and as such did not constitute "personal holding company" income.

3. The Board erred in basing its decision in part on the ground that no evidence was introduced to show what portion of Technicraft's income, if any, was derived from engineering services or from non-patentable devices as distinguished from [72] patents, the evidence being clear and convincing that none of the income was attributable to compensation for the use of patents, but that all of said income was for engineering services.

4. The Board erred in its finding that the agreement between W. G. Lane and W. T. Wells to set aside 15% of gross income for research and development was limited only to Lane-Wells Company, a California corporation, the evidence being clear and convincing that it was the agreement that they were to set aside 15% of all their gun perforating business and not limited alone to Lane-Wells Company, a California corporation.

5. The Board erred in failing to hold that the income and deductions reported by Technicraft for the year from June 1, 1937 to August 31, 1937, in fact constituted income and deductions of Lane-Wells Company, a Delaware corporation, which was successor to and transferee of Technicraft.

6. The Board erred in failing to make a finding to the effect that Technicraft's assets were distributed to Lane-Wells Company, a Delaware corporation, as of June 1, 1937, and pursuant to a resolution of Technicraft's Board of Directors on August 27, 1937, which resolution recited that such transfer of assets should be made effective as of June 1, 1937.

7. The Board erred in failing to determine that there was an overassessment of normal income tax against Technicraft for 1937 of $7,483.16.

8. The Board erred in holding that despite Technicraft's good faith and reasonable cause in not filing returns on Form 1120-H, that the assessment of a penalty was nevertheless mandatory.

9. The Board erred in not holding that the failure of Technicraft to file Form 1120-H for each of the years 1934 to [73] 1937, would prevent the statute of limitations from barring an assessment with respect to the 1934 and 1935 income of Technicraft.

Wherefore, you petitioner prays that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals and a transcript be prepared in accordance with the law and rules of said Court and transmitted to the Clerk of said Court for filing and that appropriate action be taken by said Court toward the end that the errors complained of may be reviewed and corrected.

Dated February 13th, 1942.

R. DECHTER

Attorney for Petitioner.

(Duly verified.)

[Endorsed]: U.S.B.T.A. Filed Feb. 16, 1942. [74]

United States Circuit Court of Appeals
For the Ninth Circuit

B. T. A. Docket No. 99830

TECHNICRAFT ENGINEERING CORPORATION,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

PETITION FOR REVIEW BY THE UNITED STATES CIRCUIT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

I.

JURISDICTION

Comes now Technicraft Engineering Corporation, a dissolved California corporation, by Raphael Dechter, its attorney and respectfully shows:

That petitioner is a dissolved corporation which was organized under and dissolved under the laws of the State of California and which had its principal office at 5610 South Soto Street, Los Angeles, California, hereinafter referred to as "taxpayer" and sometimes herein referred to as "Technicraft".

The respondent is the duly qualified and acting Commissioner of Internal Revenue of the United

States, herein referred to as [75] the "Commissioner".

The taxpayer filed income tax returns for the taxable years 1934, 1935, 1936 and 1937, with the Collector of Internal Revenue for the Sixth Collection District of the State of California, whose office is located within the Ninth Judicial Circuit wherein the taxpayer did reside.

The Commissioner determined deficiencies in personal holding company surtax and penalties for the years 1934, 1935, 1936 and 1937 against the taxpayer, as follows:

Year	Surtax	Penalty
1934	$3,178.80	$ 794.70
1935	9,474.53	2,368.63
1936	5,115.11	1,278.78
1937	40,992.05	10,248.01

The Commissioner also determined an overassessment of $21.82 in income tax for 1936 and a deficiency of $1,196.80 in income tax for 1937. On June 1, 1939, in accordance with the applicable statute, the Commissioner sent to the taxpayer by registered mail a notice of said deficiency.

Within ninety days thereafter the taxpayer filed a petition for a redetermination of said liability with the United States Board of Tax Appeals. Said case was consolidated for hearing and decision with the appeal of Lane-Wells Company as transferee of Technicraft in United States Board of Tax Appeals, Docket No. 99829 and both cases were simultaneously heard by the Board. On January 31, 1941, the Board promulgated its findings and opinion in

said proceeding; on September 25, 1941, the Board promulgated a supplemental opinion modifying some of its former findings and conclusions; and on November 19, 1941, the Board entered a judgment and final order of redetermination wherein and whereby it [76] was ordered and decided that there is no income tax or penalty liability against the taxpayer for the calendar year 1937; and that there are liabilities against the taxpayer in personal holding company surtax and penalties for the calendar years 1934, 1935, 1936 and 1937, as follows:

Taxable year ended 12/31/34	Surtax $3,178.80	25%	Penalty	$ 794.70
Taxable year ended 12/31/35	Surtax 9,474.53	25%	Penalty	2,368.63
Taxable year ended 12/31/36	Surtax 5,115.11	25%	Penalty	1,278.78

and that said liability for the foregoing deficiencies and penalties is to be properly reduced by a credit for overpayment of income tax for the year 1937 in the amount of $9,695.22.

II.

NATURE OF CONTROVERSY

The nature of the controversy is as follows:

The Commissioner contends that during the calendar years 1934, 1935, 1936 and part of 1937, the taxpayer was a personal holding company within the meaning of that term as defined in the Revenue Act. Up to June 1, 1937, all of the corporate stock of the taxpayer was owned in equal amounts by four persons, to-wit: W. G. Lane, Hazel T. Lane (husband and wife) and Walter T. Wells and Mary P. Wells(husband and wife). After June 1, 1937, on

which date the taxpayer was merged in a reorganization with several other companies similarly owned by the same parties, all of the taxpayer's stock was owned by Lane-Wells Company, a Delaware corporation. Technicraft was one of five corporations, the stock of each of which was held in the same manner and in its entirety by Messrs. Wells and Lane and their respective wives. At all times prior to the reorganization all of these corporations, with the exception of [77] Technicraft, were engaged in the performance of various skilled technical services in the oil industry, particularly the service of gun perforating. In addition to such rendition of services, all of these related corporations (except Technicraft) were engaged also in the manufacture and sale of various products used in the oil industry. At all times after March, 1934, at which time it commenced business operations, Technicraft was engaged in engineering, research and development work.

When the business of their corporations was first launched, Messrs. Wells and Lane, both of whom were engineers, were cognizant of the necessity of keeping abreast with scientific developments in the oil industry as essential to the success of an oil service business. In December of 1932 they acquired an exclusive license to a patent from one, Sidney Mims, which patent had been issued in the year 1926 and had never proven itself commercially practicable. Foreseeing the need of scientific research and development on the process of gun perforating,

which Mims had sought to develop, and seeing also the need of extensive scientific research and development on various other devices and processes in order to build a successful oil service business, Messrs. Wells and Lane, in December of 1932, agreed that they would set aside 15% of all their income from gun perforating, which 15% would be used to carry on the research, engineering and scientific development of Technicraft. Accordingly, Technicraft became a "laboratory" wherein patents or new processes or devices were secured, developed and passed on to the other Lane-Wells companies, which were engaged in services, manufacture and sale. In order to provide a convenient method of collecting the 15% of gun perforating income which was to constitute the research fund to be used by Technicraft for the benefit of the various Lane-Wells companies, license agreements were [78] issued from Technicraft to Lane-Wells Company, a California corporation, Lane-Wells Co. of Oklahoma, an Oklahoma corporation, and Lane-Wells Co. of Texas, a Texas corporation. It was not the intention of the persons involved that these be true license agreements, but rather than that, the execution of the license agreements, constituted a bookkeeping means of providing Technicraft with reimbursement for engineering services rendered. The 15% of gun perforating income was collected from Lane-Wells Co. of Oklahoma and Lane-Wells Co. of Texas and the entire system of engineering research and development continued even after the license agreements had ex-

pired. Lane-Wells International, another of the related Lane-Wells companies which was organized in 1936 received the benefits of engineering development by Technicraft and paid 15% of its income, even without going through the formality of the execution of a similar license agreement.

As a result of scientific development and engineering research and development, gun perforating, which had been commercially impracticable under the Mims patent, became a very successful and profitable business. In addition to the developments in gun perforating, Technicraft engineers explored new fields of endeavor in the oil industry and developed and patented many new products such as fishing magnets, packers, bridging plugs, packing glands, etc., and many new services such as Stratagraph, ex-raying cable, underground surveys, etc., all of which were passed on without further charge to the various Lane-Wells companies. Technicraft was not a mere depositary for patents, but on the other hand, occupied a large building designed for engineering purposes, in which it carried on extensive and elaborate engineering functions. It had on its payroll many experienced engineers. [79]

The Commissioner contends that Technicraft's income was royalty income within the meaning of the Personal Holding Company Act. The taxpayer contends that form must give way to substance and that the income which it received as compensation for engineering services is not "royalty" income merely because it was paid through the artificial

arrangement of patent license agreements. In the opinion and final decision of the Board, the Commissioner's contention above is upheld.

The taxpayer contends that even if the income had been royalty income, Technicraft could not have been a personal holding company during the year of 1937 for the reason that during the latter half of the year 1937, it was no longer doing business but all of its activities were carried on by Lane-Wells Company, a Delaware corporation. On June 1, 1937, all of the constituent Lane-Wells companies entered into a reorganization agreement whereby Lane-Wells Company, a Delaware corporation, which had been formed for such purpose, was to issue 250,000 shares of its stock to Messrs. Wells and Lane and their wives respectively, in exchange for all of the stock of the constituent corporations; that as of June 1, 1937, the new Delaware corporation was to take over all of the assets of the constituent corporations as of their value on June 1, 1937, and was to carry on the business of the various corporations. It was provided that the various constituent corporations were to be dissolved in due course. As a result of such agreement, Lane-Wells Company, a Delaware corporation, took over the assets of Technicraft as of June 1, 1937, although the mechanics of the plan consumed several months before it was entirely and formally completed. The taxpayer contends that the fact that formal completion of the reorganization was not consummated until subsequent [80] to June 1, 1937, did not destroy the effectiveness of

the agreement that it be given effect as of June 1, 1937, which was also the date of the execution of the reorganization agreement. The Commissioner contends that because the issuance of stock of Lane-Wells Company (Delaware) was delayed due to delay in the issuance of a permit by the Corporation Commissioner of the State of California, that the reorganization cannot therefore be considered as effected as of June 1, 1937. In the opinion and final decision of the Board of Tax Appeals, the Commissioner's contention above is upheld.

As part of the reorganization of June 1, 1937, a sum of not less than $65,814.75, which was attributable to earned surplus was distributed with the remaining assets of Technicraft to Lane-Wells Company, a Delaware corporation. The taxpayer contends that it is entitled to dividends paid credit for this amount and the Commissioner contends that it is not. In the opinion and final decision of the Board of Tax Appeals, the taxpayer's contention above is upheld. No error on this phase of the Board's decision is hereby specified or alleged.

The taxpayer contended that the three years statute of limitations barred assessments for the years 1934 and 1935. The Commissioner contended that the failure of Technicraft to file returns on Form 1120-H (personal holding company returns) prevented the statute of limitations from running. It is conceded that the officers and agents of Technicraft believed in good faith that it was not a personal holding company and, therefore, said corporation did not file returns on Form 1120-H.

Technicraft fully and completely reported all of its income on Form 1120. In the opinion and final decision of the Board, the Commissioner's contention above was upheld. [81]

The taxpayer contended that the penalties of 25% for taxpayer's failure to file a personal holding company return on Form 1120-H, should not be assessed because Technicraft acted in good faith while the Commissioner contended that the assessment of the penalties was mandatory. In the opinion and final decision of the Board, the Commissioner's contention above is upheld.

III.

ASSIGNMENT OF ERRORS

In making its decision, as aforesaid, the United States Board of Tax Appeals committed the following errors, upon which your petitioner relies as the basis of this proceeding:

1. The Board erred in determining that the taxpayer was a personal holding company for the years 1934 to 1937 inclusive.

2. The Board erred in failing to determine that the amounts of petitioner's income designated as royalty were in fact compensation for tangible services rendered to affiliated corporations and as such did not constitute "personal holding company" income.

3. The Board erred in basing its decision in part on the ground that no evidence was introduced to show what portion of petitioner's income, if any,

was derived from engineering services or from non-patentable devices as distinguished from patents, the evidence being clear and convincing that none of the income was attributable to compensation for the use of patents, but that all of said income was for engineering services.

4. The Board erred in its finding that the agreement between W. G. Lane and W. T. Wells to set aside 15% of gross income for research and development was limited only to Lane-Wells Company, a California corporation, the evidence being clear and convincing [82] that it was their agreement that they were to set aside 15% of all their gun perforating business and not limited alone to Lane-Wells Company of California.

5. The Board erred in failing to hold that the income and deductions reported by the taxpayer for the year from June 1, 1937 to August 31, 1937, in fact constituted income and deductions of Lane-Wells Company, a Delaware corporation, which was a successor to and transferee of the taxpayer.

6. The Board erred in failing to make a finding to the effect that Technicraft's assets were distributed to Lane-Wells Company, a Delaware corporation as of June 1, 1937, pursuant to a resolution of its Board of Directors on August 27, 1937, which resolution recited that such transfer of assets should be made effective as of June 1, 1937.

7. The Board erred in failing to determine that there was an overassessment of normal income tax against the taxpayer for 1937 of $7,483.16.

8. The Board erred in holding that despite taxpayer's good faith and reasonable cause in not filing returns on Form 1120-H, that the assessment of a penalty was nevertheless mandatory.

9. The Board erred in holding that the failure of petitioner to file Form 1120-H for each of the years 1934 to 1937, would prevent the statute of limitations from barring an assessment with respect to the 1934 and 1935 income of petitioner.

Wherefore, your petitioner prays that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals and a transcript be prepared in accordance with the law and rules of said Court and transmitted to the Clerk of said Court for filing and that appropriate action be taken by said [83] Court toward the end that the errors complained of may be reviewed and corrected.

Dated February 13th, 1942.

R. DECHTER
Attorney for Petitioner.

(Duly verified.)

[Endorsed]: U.S.B.T.A. Filed Feb. 16, 1942. [84]

[Title of Circuit Court of Appeals and Causes.]

STATEMENT OF EVIDENCE

The above entitled cause came on for hearing at Los Angeles, California, before the Honorable Eugene Black, member of the United States Board of

Tax Appeals, on the 5th day of June, 1940, Raphael Dechter, Esq., appearing on behalf of petitioners, and E. A. Tonjes, Esq., and Alva C. Baird, Esq., appearing on behalf of respondent. Thereupon, the following proceedings were had and the parties, by their attorneys, submitted the following evidence.

Pursuant to stipulation an order was entered consolidating the two cases. [349]

WALTER T. WELLS,

a witness called on behalf of petitioners, being duly sworn, on direct examination, testified as follows:

Direct Examination

I am connected with Lane-Wells Company, a Delaware corporation, as Chairman of the Board of Directors and Vice-President. I am also a stockholder of said corporation owning 8,875 shares. There are 360,000 shares outstanding of said corporation.

Prior to the organization of Lane-Wells Company, a Delaware corporation, I was one of the incorporators and organizers, as well as President of Technicraft Engineering Corporation. The business of Technicraft Engineering Corporation was primarily engineering, as well as research and development and experimental work. It was confined to such business from the time of its organization until its dissolution. Practically all of the work done by Technicraft in engineering, research and development was done for The Lane-Wells Company, a California corporation and the other companies

(Testimony of Walter T. Wells.)

owned by Mr. Lane and myself. Technicraft was organized in December of 1932 and actually started doing business in the spring of 1934. It was inactive from the time of incorporation until the spring of 1934. I am familiar with the exclusive license agreement dated December 21, 1932, between Sidney W. Mims as licensor and Lane-Wells Co. (Calif.) as licensee. The signatures on said document are those of Sidney W. Mims, witnessed by Bradley L. Benson and my signature, witnessed by W. G. Lane. The Mims license agreement refers to the process or method of gun perforating. The Mims patent is a basic patent issued to Mr. Mims in 1926. In December of 1932, we secured the exclusive license agreement on that patent from [350] him.

Thereupon counsel for petitioners offered and there was received in evidence, marked Petitioners' Exhibit 1, the License Agreement dated December 21, 1932, between Sidney W. Mims, as Licensor, and Lane-Wells Co., as Licensee.

PETITIONERS' EXHIBIT No. 1

EXCLUSIVE LICENSE AGREEMENT

This Agreement, made and entered into this 21st day of December, 1932 by and between Sidney W. Mims of the City and County of Los Angeles, State of California, hereinafter referred to as the licensor, and The Lane-Wells Co., a corporation duly organized under the laws of the State of California and

(Testimony of Walter T. Wells.)

having its place of business at 4439 Santa Fe Avenue, in the City and County of Los Angeles, State of California, hereinafter referred to as the licensee,

Witnesseth:

That Whereas said licensor has invented certain method and means for performing well casing, for which he has obtained letters patent of the United States of America, Serial No. 1,582,184, dated April 27th, 1926, and

Whereas the said licensor does hereby warrant that he is the first and sole inventor of the method and means for perforating well casings described in the aforesaid letters patent and that he is the sole and exclusive owner of said invention and said letters patent, and

Whereas, the licensee is desirous of acquiring the exclusive right to manufacture, use and vend said invention—

Now Therefore It Is Mutually Covenanted and Agreed as Follows:—

1. In consideration of the sum of one hundred dollars ($100.00) paid by licensee to licensor, receipt of which is hereby acknowledged, and of the covenants and agreements contained herein and of the performance thereof, the licensor does hereby grant the licensee, its successors and assigns, and to its sublicensees, subject to certain restrictions hereinafter written concerning sub-license, the exclusive right, liberty and license to make, use and sell devices embodying the invention patented in and by the aforesaid United States Letters Patent, in and

(Testimony of Walter T. Wells.)

thruout the United States of America, its territories and possessions, under and for the full unexpired term of said letters patent.

2. Licensee agrees to pay licensor in the manner and at the time hereinafter provided, as full consideration for the grant of this license, the sum of one hundred dollars ($100.00) for each and every month of the fiscal year commencing March 1, 1933 and ending March 1, 1934, and the further sum of two hundred dollars ($200.00) for each and every calendar month thereafter during the life of this agreement, said monthly payments to be made on the first day of each month.

3. So long as this license remains exclusive, licensee shall be authorized to bring suit in its own name and on its own behalf, or, if required by law, jointly with licensor, and at the expense of licensee, for infringement of said patent under which the licensee is herein licensed, and to collect for its own use all damages, profits and awards of whatever nature recoverable for such infringement. Licensor, however, reserves the right to bring suit in his own name, or jointly with the licensee if required by law, and at licensor's expense, in case the licensee does not do so, to enjoin the unlicensed use of the invention covered by said patent, and to collect for his own use all damages, profits and awards recoverable therein.

4. The Licensee, The Lane-Wells Co., hereby acknowledges the validity of the letters patent aforesaid, the ownership thereof by Sidney W. Mims, and

(Testimony of Walter T. Wells.)

agrees not to be a party, directly or indirectly, to any suit or procedure disputing the validity or tending to impair the value of said letters patent or to diminish the enjoyment of the said Sidney W. Mims of his revenue from said letters patent.

5. The Licensee is free to make such modification in the design and construction of said invention as may be deemed expedient by them to best meet the conditions of manufacture and/or sale and or use, and the monthly payment of royalty by licensee to licensor shall be due and payable for the life of this agreement, irrespective of what form of casing perforating device licensee shall make, use or sell, so long as the same shall come within the scope of the claims of said letters patent.

6. If either party fails to comply with any provision of this agreement by it to be performed, then at any time during such default (except where the same is by reason of strike, riot, fire, storm or other Providential cause), either party may, by written notice specifying such default, demand performance, and upon failure to cure said default within ninety (90) days of such demand, this agreement may be cancelled in writing at the option of the party making the demand for performance.

7. Licensee shall mark each device embodying licensor's invention as follows:— License Notice Patent No. 1,582,184.

8. All sublicenses which may be hereafter granted by licensee to parties outside this agreement, shall contain and include a copy of this agreement

(Testimony of Walter T. Wells.)

in order that said parties shall have notice of the forfeiture provisions herein contained.

9. Licensee shall have the right to assign this license to a corporation to be known as Technicraft Engineering Corp. to be owned and controlled by W. G. Lane and W. T. Wells.

10. Licensee agrees not to sell any devices which come within the scope of licensor's patent, but instead will adopt the policy of licensing, renting and servicing said devices and derive revenue therefrom by license or rental, and not by sale. Should any such sale be contemplated by licensee, permission to make such sale must first be obtained in writing from licensor so to do.

11. This agreement shall be binding upon and shall enure to the benefit of the executors, administrators and assigns of the licensor, and the successors, assigns or legal representatives of the licensee.

In Testimony Whereof, witness the hand of the licensor, and the licensee has caused these presents to be executed in its name by its president, attested by its secretary, and its corporate seal hereto attached.

SIDNEY W. MIMS (Signed)
Licensor.

BRADLEY L. BENSON (Signed)
Witness.

THE LANE-WELLS CO.
By W. T. WELLS (Signed)

Attest: W. G. LANE (Signed)
Secretary.

[Seal]

(Testimony of Walter T. Wells.)

Subscribed in my presence this 21st day of December, 1932.

W. H. COPPER (Signed)
Notary Public in and for Los Angeles County, State of California.

My commission expires May 3rd, 1934.
[Seal]

Recorded
Transfers of Patents
U. S. Patent Office
Dec. 24, 1932
Liner A155 Page 215
Thomas E. Robertson
Commissioner of Patents

[Endorsed]: U.S.B.T.A. Filed Jun. 5, 1940.

Paragraph 9 of the Mims license agreement states that licensee shall have the right to assign the license to a corporation to be known as Technicraft Engineering Corporation, to be owned and controlled by W. G. Lane and Walter T. Wells, The articles of incorporation of Technicraft had been filed some time previous to that. On March 1, 1934, Lane-Wells Company assigned said exclusive license agreement to Technicraft. It was about March 1, 1934 that Technicraft started doing business.

Thereupon counsel for petitioners offered and there was received in evidence, marked Petitioners' Exhibit 2, a copy of Assignment of ex-

(Testimony of Walter T. Wells.)

clusive License Agreement dated March 1, 1934 from Lane-Wells Co. to Technicraft Engineering Corporation.

PETITIONERS' EXHIBIT No. 2

ASSIGNMENT OF EXCLUSIVE LICENSE AGREEMENT.

Liber V159 page 289

Reference is hereby made to that certain agreement dated December 21, 1932 by and between Sidney W. Mins, of Los Angeles, as licensor, and The Lane-Wells Co., as licensee, wherein and whereunder the licensor, as the inventor and owner of letters patent of the United States of America, Serial No. 1,582,184, dated April 27, 1926 covering a certain method and means for perforating well casing, does grant to the licensee the exclusive license and right to make, use and sell devices embodying the invention patented in and by the aforesaid letters patent, and

Whereas, said licensee took said exclusive license in trust and for the benefit of the Technicraft Engineering Corporation,

Now Therefore, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned, The Lane-Wells Co. a corporation, and being the licensee designated in the above mentioned exclusive license agreement, does hereby sell, transfer, assign and set over unto the Technicraft Engineering Corporation all of its right, title and interest in and

(Testimony of Walter T. Wells.)

to said exclusive license agreement aforementioned and hereby granting to said Technicraft Engineering Corporation all the right, remedies and privileges of any kind to which it may have been entitled as licensee under said exclusive license agreement, hereby authorizing the said licensee to do any and all things in and about said exclusive license agreement in the same manner that the undersidned, The Lane-Wells Co., might or could do.

Dated: this 1st day of March, 1934.

THE LANE-WELLS CO.

By W. T. WELLS, President.

[Seal] By W. G. LANE, Secretary.

State of California

County of Los Angeles—ss.

On this 1st day of March, 1934, before me, Raphael Dechter, a Notary Public in and for said County and State, personally appeared W. T. Wells, known to me to be the President and W. G. Lane, known to me to be the Secretary of The Lane-Wells Co. the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

RAPHAEL DECHTER,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: U.S.B.T.A. Filed Jun. 5, 1940.

(Testimony of Walter T. Wells.)

On March 1, 1934, Technicraft executed a sub-license agreement to Lane-Wells Co. This was executed concurrently with the execution of the assignment to Technicraft.

Thereupon counsel for Petitioners offered and there was received in evidence, marked Petitioners' Exhibit 3, Sub-License Agreement between Technicraft Engineering Corp. and Lane-Wells Company, dated March 1, 1934.

PETITIONERS' EXHIBIT No. 3

SUB-LICENSE AGREEMENT

Liber V159 - page 295

Reference is hereby made to that certain exclusive license agreement entered into December 21, 1932, by and between Sidney W. Mims, as licensor, and The Lane-Wells Co., as licensee, covering the exclusive right and license to make, use and sell any and all devices embodying an invention patented in and by letters patent of the United States of America, Serial No. 1,582,184, dated April 27, 1926, and

Reference is made to that certain assignment of exclusive license agreement, dated March 1, 1934, by and between The Lane-Wells Co., a corporation, assignor, and Technicraft Engineering Corporation, assignee,

Now, Therefore, it is agreed between the parties hereto as follows:

(Testimony of Walter T. Wells.)

That the undersigned, Technicraft Engineering Corporation, does hereby grant to The Lane-Wells Co., a corporation, a sub-license hereunder in consideration of the royalty hereinafter provided, and the undersigned does hereby grant by virtue of this sub-license to said Lane-Wells Co. any and all rights, privileges and remedies which it might or could do, exercise or perform under said license agreement, provided, however, that the rights of such sub-licensee under this sub-license shall be restricted to the State of California.

In consideration of the granting of said sub-license, said Lane-Wells Co., as sub-licensee, does hereby agree to pay to the Technicraft Engineering Corporation, as sub-licensor, a royalty of fifteen (15%) per cent of any and all gross receipts derived from the manufacture, sale, rental or use of any device of any kind by virtue of this sub-license agreement, such royalty to be payable on the 20th day of each and every month for the royalties accruing for the month previous. Such royalty checks shall be accompanied by an itemized accounting showing any and all transactions carried on under this sub-license. Sub-licensor shall be entitled to inspect the books of the sub-licensee at any time for the purpose of verifying any accounting given to it.

Pursuant to the original exclusive license agreement, there is attached hereto a copy of said original exclusive license agreement and said sub-license agrees to perform all and singular the terms thereof.

In the event of any default in the terms and provisions of this agreement, including payment of the

(Testimony of Walter T. Wells.)

royalty and the failure to remedy the same after two weeks after written notice of such default said licensor shall have the option in such event to terminate this sub-license agreement.

Dated: This 1st day of March, 1934.

TECHNICRAFT ENGINEERING CORPORATION
By W. T. WELLS,
President.
By W. G. LANE,
Secretary.

Accepted and Approved:
THE LANE-WELLS CO.
By W. T. WELLS,
President.
By W. G. LANE,
Secretary.

[Seal]

State of California
County of Los Angeles—ss.

On this 1st day of March, 1934, before me, Raphael Dechter, a Notary Public in and for said County and State, personally appeared W. T. Wells, known to me to be the President, and W. G. Lane, known to me to be the Secretary of The Technicraft Engineering Corporation, the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowl-

(Testimony of Walter T. Wells.)

edged to me that such corporation executed the same.

Witness my hand and official seal.

RAPHAEL DECHTER,

[Seal]

Notary Public in and for the County of Los Angeles, State of California.

Recorded—Transfers of Patents, U. S. Patent Office, May 26, 1934. Liber V159, page 295.

CONWAY P. COE,

Commissioner of Patents.

[Endorsed]: U.S.B.T.A. Filed Jun. 5, 1940.

As President of both companies, I executed the License Agreement from Technicraft to Lane-Wells Company of Oklahoma dated February 13, 1936. On or about that date Lane-Wells Co., the California corporation, ceased to do business in Oklahoma and in lieu thereof the Lane-Wells Company of Oklahoma commenced doing business within Oklahoma. [351]

Thereupon counsel for Petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 4, License Agreement dated February 13, 1936, between Technicraft Engineering Corporation, as Licensor, and Lane-Wells Company of Oklahoma, as Licensee.

(Testimony of Walter T. Wells.)

PETITIONERS' EXHIBIT No. 4

LICENSE AGREEMENT

Preamble:

This Agreement made and entered into by and between the Technicraft Engineering Corp., a California corporation, having a place of business in Los Angeles, California, hereinafter referred to as the Licensor, and The Lane-Wells Co. of Oklahoma, an Oklahoma corporation, having a place of business at Oklahoma City, Oklahoma, hereinafter referred to as the Licensee:

Witnesseth

Recitals:

Whereas, the Licensor warrants that it has the right to license to others a certain invention hereinafter referred to as Well Casing Perforator embraced in the following patent:

No.—1,582,184

Inventor—Sidney W. Mims

Date—April 27, 1926

Title—Method and Means for Perforating Well Casing

Whereas, the rights of the Licensor herein relative to said patent number 1,582,184 issued to one Sidney W. Mims is evidenced by a certain exclusive license agreement and assignment thereof recorded in the United States Patent Office, Liber V159, page 289;

Whereas, the Licensee is desirous of acquiring a license in the States of Oklahoma, Kansas, Wyom-

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 4 (Continued)

ing, Colorado, and Montana only, to make and purchase for the Licensee's own use and to use but not to sell, rent or lease to others said Well Casing Perforator, subject, however, to certain reservations and conditions to be set forth hereinafter.

Covenant:

Now, Therefore, in consideration of the sum of Ten Dollars ($10.00) paid by each party to the other upon execution of this agreement, receipt of which is hereby acknowledged, and in further consideration of the herein contained mutual covenants and agreements for the faithful performance thereof, said parties have and do hereby agree as follows:

I. Definitions:

The term "Perforators" shall be construed to mean not only the patent specifically mentioned hereinbefore, but also any and all inventions, applications, patents and any continuations, divisions, and/or reissues thereof and whether in the nature of apparatus or processes which the Licensor now owns or controls or which it may at any time during the life of this agreement own or control and which relate or are accessories to said Perforators. The term "Patent Rights" shall be construed to embrace as a group all the patents and applications herein specified or referred to or implied. The term "gross receipts" shall be construed to mean the total receipts derived in any manner whatsoever from the manufacture and/or use of any and

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 4 (Continued)

all apparatus or processes covered by said Patent Rights without deductions of any kind or character.

II. License:

The Licensor hereby grants and conveys to the Licensee a non-exclusive license in and throughout the States of Oklahoma, Kansas, Wyoming, Colorado, and Montana only, subject to the terms and conditions of this agreement, to make or purchase for the Licensee's own use only, and to use but not to sell, rent, or lease to others said Perforators.

III. Term of License:

This license shall continue in force, unless otherwise cancelled, for a period of one year from the date of execution thereof, and shall thereafter become null and void except that the parties hereto may by further agreement extend or renew this license.

IV. Royalties:

The royalty payments on the Patent Rights herein licensed shall be fifteen percent (15%) of the gross receipts; minimum royalties shall be not less than Seven Hundred and Fifty Dollars ($750.00) per month.

Royalty payments shall become due and payable to the Licensor on the tenth day of each month for such royalties as have accrued during the preceding month; the first royalty payment hereunder shall become due and payable on the tenth day of the month following execution of this agreement.

(Testimony of Walter T. Wells.)

Pefitioners' Exhibit No. 4 (Continued)

V. Books of Account:

The Licensee shall keep accurate books of account showing the purchase, manufacture, and/or use of any and all subject matter relating to or embraced in the Patent Rights herein licensed, said books of account to show plainly the name and address of each customer for whom such use was made and the nature thereof. The Licensee shall give the Licensor, or its duly accredited agent, full access to said books of account at all times during conventional business hours both during the term of this agreement and for a period of twelve (12) months after its termination. The Licensee shall deliver with each royalty payment a full and exact duplicate of the entries made in said books of account during the preceding month.

VI. Diligence in Marketing:

Licensee shall use and continue to use reasonable diligence in creating and fulfilling a demand for the apparatus and/or processes embraced in the Patent Rights herein conveyed, to establish and maintain complete and adequate Perforator service throughout the territory herein licensed, and to conduct the business generally with an endeavor to establish and maintain a good reputation for the subject matter herein licensed.

VII. Improvements by Licensee:

Licensee shall disclose to Licensor all inventions, applications, patents, or continuations, divisions

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 4 (Continued)

and/or reissues dominated by the Patent Rights herein defined which the Licensee may now own or control during the life of this agreement, or which may be jointly or solely invented by any officer, executive, agent, or employee of the Licensee; it being understood that the Licensee shall, upon execution of this agreement, enter into the necessary agreements with its officers, executives, agents and employees to give effect to this section.

Upon disclosure of such inventions, applications, patents, or continuations, divisions and/or reissues, dominated by the Patent Rights, the Licensor shall have a forty-five (45) day option period to accept and incorporate the same with the Patent Rights herein licensed; and, if the nature of the subject matter so accepted requires, to file the necessary patent applications thereon at its own expense. Should the Licensor fail to exercise its option, the Licensee shall retain full rights thereto.

VIII. Infringement of Patent Rights:

A. Suit by Licensor—

Should any or all of the Patent Rights herein conveyed be infringed within the territory herein licensed, the Licensor shall at its own expense and within ninety (90) days after being notified in writing by the Licensee institute and prosecute with diligence a suit or suits against such infringers.

B. Suit by Licensee—

Should the Licensor so fail to sue within the time herein specified, or once commencing such suit

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 4 (Continued)

or suits fail to prosecute the matter with due diligence, the Licensee may either cancel this agreement, or file such suit or suits at its own expense, providing however, the Licensor may at any time employ its own counsel who shall conduct such suit or suits jointly with the counsel for Licensee.

C. Proceeds from Suits—

The party hereto conducting such suit or suits shall be entitled to reimbursement for its expense in conjunction therewith, or if both parties should sue jointly, they shall be reimbursed pro rata; should there be a remainder after such reimbursement, the Licensor shall receive a portion of such remainder corresponding to the royalty percentage specified hereinbefore, and the balance shall go to the Licensee; however, nothing herein shall be construed to give the Licensee any rights to reimbursement from or division of any sums derived from infringement occurring outside the territory herein licensed.

IX. Patent Marking:

Licensee shall affix in a conspicuous place or in conjunction with all apparatus embraced in the Patent Rights herein conveyed a patent notice which complies with the requirements of the patent laws of the United States.

X. Acknowledgment of Validity:

Licensee hereby acknowledges the ownership of the Licensor and the Validity of any and all patents

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 4 (Continued)

now or hereafter constituting a part of said Patent Rights and agrees that it will not at any time during the term of this agreement, or after termination thereof, either directly or indirectly contest the validity or ownership of said Licensor of any and all such patents.

XI. Non-Assignability:

This agreement is personal to the Licensee and is non-assignable either in whole or in part except to the heirs or successors in the business and good will of the Licensor.

XII. Previous Agreements:

All previous agreements, if any, between the parties hereto relating to the Patent Rights herein licensed are hereby cancelled and the present agreement is substituted therefor.

XIII. Knowledge of Extraneous Agreements:

The Licensee herein admits full knowledge of the contents and conditions of a license agreement respecting Patent No. 1,582,184 issued to Sidney W. Mims and recorded in the United States Patent Office at Liber V159, Page 289, and shall be bound by and subject to the conditions therein contained.

XIV. Cancellation Because of Breach:

A. Procedure—

Time is the essence of this contract; therefore, should either of the parties hereto fail to comply

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 4 (Continued)

with any provision of this agreement by it to be performed, then at any time during such default (except where the same is by reason of strike, riot, fire, storm, or other providential cause) the injured party may, by written notice specifying the default, demand performance, and upon failure to cure such default within sixty (60) days after such demand, such injured party may cancel this agreement forthwith, or any part thereof, providing the character of the default so permits; however, should the party in default rectify its default within sixty (60) days, this agreement shall continue in full force and effect as if no notice had been given.

B. Repeated Breach—

Should either party hereto repeat its failure to comply with any provision after once being notified of its breach, even though it has once rectified the default, the injured party may cancel the agreement forthwith upon serving written notice to the party in default.

C. Waiver—

Cancellation of this contract shall not work a waiver of any legal or equitable rights or remedies that the injured party may have, or affect any monetary obligation from the defaulting party to the injured party; and failure of an injured party to notify the party in default shall not work a condonation of the offense, or a waiver of the injured

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 4 (Continued)

party's right to terminate this agreement as herein provided.

XV. Cancellation Irrespective of Breach:

Should a petition in bankruptcy be filed by or against the Licensee, or should a receiver be appointed by any Court to control the assets of the Licensee, or should the Licensee make any assignment for the benefit of creditors, or become involved in any proceedings the effect of which would be, if consummated, to transfer any interest herein to any representative of creditors, trustee, or receiver, this agreement shall be ipso facto void in its entirety, and all rights of the Licensee hereunder shall terminate except to complete and close upon all business done, subject to the terms of this agreement.

XVI. Written Notice:

Wherever in this agreement written notice to either party is required, such condition shall be deemed fulfilled upon deposit into the registered mails of the post office of a postpaid envelope addressed to the other party at its regular and established place of business and containing the required notice.

Signed and executed in duplicate this 13th day of February, 1936.

TECHNICRAFT ENGINEERING CORP.

By WALTER T. WELLS,

President

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 4 (Continued)

THE LANE-WELLS CO. OF OKLAHOMA
By WALTER T. WELLS,
President

State of California,
County of Los Angeles—ss.

On this 13th day of February, 1936, before me, the subscriber, personally appeared Walter T. Wells, who being duly sworn, did depose and say that he is a resident of Glendale, California; that he is the President of the Technicraft Engineering Corp., and The Lane-Wells Co. of Oklahoma, which executed the foregoing instrument; that he knows the seals of said Corporations, that the seals affixed to said instrument are said corporate seals; that they were thereunto affixed by order of the Boards of Directors of the respective Corporations and that he signed his name thereto by like order.

F. R. SHUMACK,
Notary Public, in and for said County and State

My commission expires Dec. 31, 1939.

[Endorsed]: U. S. B. T. A.
Filed June 5, 1940.

(Testimony of Walter T. Wells.)

As President of both companies, I executed a license agreement between Technicraft and The Lane-Wells Co. of Texas, dated February 13, 1936. The Lane-Wells Co. of Texas had started doing a little of this business a few months prior to the execution of the license agreement.

Thereupon counsel for Petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 5, License Agreement between Technicraft Engineering Corporation and The Lane-Wells Company of Texas, dated February 13, 1936.

PETITIONERS' EXHIBIT NO. 5

LICENSE AGREEMENT

Preamble:

This Agreement made and entered into by and between the Technicraft Engineering Corp., a California corporation, having a place of business in Los Angeles, California, hereinafter referred to as the Licensor, and The Lane-Wells Co. of Texas, a Texas corporation, having a place of business at Houston, Texas, hereinafter referred to as the Licensee:

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

WITNESSETH

Recitals:

Whereas, the Licensor warrants that it has the right to license to others a certain invention hereinafter referred to as Well Casing Perforator embraced in the following patent:

No. 1,582,184; Inventor, Sidney W. Mims; Date, April 27, 1926; Title, Method and Means for Perforating Well Casing.

Whereas, the rights of the Licensor herein relative to said patent number 1,582,184 issued to one Sidney W. Mims is evidenced by a certain exclusive license agreement and assignment thereof recorded in the United States Patent Office, Liber V159, Page 289;

Whereas, the Licensee is desirous of acquiring a license in the States of Texas, Louisiana, Mississippi, Arkansas, and New Mexico only, to make and purchase for the Licensee's own use and to use but not to sell, rent, or lease to others said Well Casing Perforator, subject, however, to certain reservations and conditions to be set forth hereinafter.

Covenant:

Now, Therefore, in consideration of the sum of Ten Dollars ($10.00) paid by each party to the other upon execution of this agreement, receipt of which is hereby acknowledged, and in further consideration of the herein contained mutual covenants and agreements for the faithful performance

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

thereof, said parties have and do hereby agree as follows:

I. Definitions:

The term "Perforators" shall be construed to mean not only the patent specifically mentioned hereinbefore, but also any and all inventions, applications, patents and any continuations, divisions, and/or reissues thereof and whether in the nature of apparatus or processes which the Licensor now owns or controls or which it may at any time during the life of this agreement own or control and which relate or are accessories to said Perforators. The term "Patent Rights" shall be construed to embrace as a group all the patents and applications herein specified or referred to or implied. The term "gross receipts" shall be construed to mean the total receipts derived in any manner whatsoever from the manufacture and/or use of any and all apparatus or processes covered by said Patent Rights without deductions of any kind or character.

II. License:

The Licensor hereby grants and conveys to the Licensee a non-exclusive license in and throughout the States of Texas, Louisiana, Mississippi, Arkansas, and New Mexico only, subject to the terms and conditions of this agreement, to make or purchase for the Licensee's own use only, and to use but not to sell, rent, or lease to others said Perforators.

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

III. Term of License:

This license shall continue in force, unless otherwise cancelled, for a period of one year from the date of execution thereof, and shall thereafter become null and void except that the parties hereto may by further agreement extend or renew this license.

IV. Royalties:

The royalty payments on the Patent Rights herein licensed shall be fifteen percent (15%) of the gross receipts; minimum royalties shall be not less than Fifteen Hundred Dollars ($1500.00) per month.

Royalty payments shall become due and payable to the Licensor on the tenth day of each month for such royalties as have accrued during the preceding month; the first royalty payment hereunder shall become due and payable on the tenth day of the month following execution of this agreement.

V. Books of Account:

The Licensee shall keep accurate books of account showing the purchase, manufacture, and/or use of any and all subject matter relating to or embraced in the Patent Rights herein licensed, said books of account to show plainly the name and address of each customer for whom such use was made and the nature thereof. The Licensee shall give the Licensor, or its duly accredited agent, full

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

access to said books of account at all times during conventional business hours both during the term of this agreement and for a period of twelve (12) months after its termination. The Licensee shall deliver with each royalty payment a full and exact duplicate of the entries made in said books of account during the preceding month.

VI. Diligence in Marketing:

Licensee shall use and continue to use reasonable diligence in creating and fulfilling a demand for the apparatus and/or processes embraced in the Patent Rights herein conveyed, to establish and maintain complete and adequate Perforator service throughout the territory herein licensed, and to conduct the business generally with an endeavor to establish and maintain a good reputation for the subject matter herein licensed.

VII. Improvements by Licensee:

Licensee shall disclose to Licensor all inventions, applications, patents, or continuations, divisions and/or reissues dominated by the Patent Rights herein defined which the Licensee may now own or control during the life of this agreement, or which may be jointly or solely invented by any officer, executive, agent, or employee of the Licensee; it being understood that the Licensee shall, upon execution of this agreement, enter into the necessary agreements with its officers, executives, agents and employees to give effect to this section.

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

Upon disclosure of such inventions, applications, patents, or continuations, divisions and/or reissues, dominated by the Patent Rights, the Licensor shall have a forty-five (45) day option period to accept and incorporate the same with the Patent Rights herein licensed; and, if the nature of the subject matter so accepted requires, to file the necessary patent applications thereon at its own expense. Should the Licensor fail to exercise its option, the Licensee shall retain full rights thereto.

VIII. Infringement of Patent Rights:

A. Suit by Licensor—

Should any or all of the Patent Rights herein conveyed be infringed within the territory herein licensed, the Licensor shall at its own expense and within ninety (90) days after being notified in writing by the Licensee institute and prosecute with diligence a suit or suits against such infringers.

B. Suit by Licensee—

Should the Licensor so fail to sue within the time herein specified, or once commencing such suit or suits fail to prosecute the matter with due diligence, the Licensee may either cancel this agreement, or file such suit or suits at its own expense, providing however, the Licensor may at any time employ its own counsel who shall conduct such suit or suits jointly with the counsel for Licensee.

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

C. Proceeds from Suits—

The party hereto conducting such suit or suits shall be entitled to reimbursement for its expense in conjunction therewith, or if both parties should sue jointly, they shall be reimbursed pro rata; should there be a remainder after such reimbursement, the Licensor shall receive a portion of such remainder corresponding to the royalty percentage specified hereinbefore, and the balance shall go to the Licensee; however, nothing herein shall be construed to give the Licensee any rights to reimbursement from or division of any sums derived from infringement occurring outside the territory herein licensed.

IX. Patent Marking:

Licensee shall affix in a conspicuous place or in conjunction with all apparatus embraced in the Patent Rights herein conveyed a patent notice which complies with the requirements of the patent laws of the United States.

X. Acknowledgment of Validity:

Licensee hereby acknowledges the ownership of the Licensor and the validity of any and all patents now or hereafter constituting a part of said Patent Rights and agrees that it will not at any time during the term of this agreement, or after termination thereof, either directly or indirectly contest the validity or ownership of said Licensor of any and all such patents.

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued).

XI. Non-Assignability:

This agreement is personal to the Licensee and is non-assignable either in whole or in part except to the heirs or successors in the business and good will of the Licensor.

XII. Previous Agreements:

All previous agreements, if any, between the parties hereto relating to the Patent Rights herein licensed are hereby cancelled and the present agreement is substituted therefor.

XIII. Knowledge of Extraneous Agreements:

The Licensee herein admits full knowledge of the contents and conditions of a license agreement respecting Patent No. 1,582,184 issued to Sidney W. Mims and recorded in the United States Patent Office at Liber V159, Page 289, and shall be bound by and subject to the conditions therein contained.

XIV. Cancellation Because of Breach:

A. Procedure—

Time is the essence of this contract; therefore, should either of the parties hereto fail to comply with any provision of this agreement by it to be performed, then at any time during such default (except where the same is by reason of strike, riot, fire, storm, or other providential cause) the injured party may, by written notice specifying the default, demand performance, and upon failure to cure such

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

default within sixty (60) days after such demand, such injured party may cancel this agreement forthwith, or any part thereof, providing the character of the default so permits; however, should the party in default rectify its default within sixty (60) days, this agreement shall continue in full force and effect as if no notice had been given.

B. Repeated Breach—

Should either party hereto repeat its failure to comply with any provision after once being notified of its breach, even though it has once rectified the default, the injured party may cancel the agreement forthwith upon serving written notice to the party in default.

C. Waiver—

Cancellation of this contract shall not work a waiver of any legal or equitable rights or remedies that the injured party may have, or affect any monetary obligation from the defaulting party to the injured party; and failure of an injured party to notify the party in default shall not work a condonation of the offense, or a waiver of the injured party's right to terminate this agreement as herein provided.

XV. Cancellation Irrespective of Breach:

Should a petition in bankruptcy be filed by or against the Licensee, or should a receiver be appointed by any Court to control the assets of the

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

Licensee, or should the Licensee make any assignment for the benefit of creditors, or become involved in any proceedings the effect of which would be, if consummated, to transfer any interest herein to any representative of creditors, trustee, or receiver, this agreement shall be ipso facto void in its entirety, and all rights of the Licensee hereunder shall terminate except to complete and close upon all business done, subject to the terms of this agreement.

XVI. Written Notice:

Wherever in this agreement written notice to either party is required, such condition shall be deemed fulfilled upon deposit into the registered mails of the post office of a postpaid envelope addressed to the other party at its regular and established place of business and containing the required notice.

Signed and executed in duplicate this 13th day of February, 1936.

TECHNICRAFT ENGINEERING CORP.
By WALTER T. WELLS,
President.

THE LANE-WELLS CO. OF TEXAS
By WALTER T. WELLS,
President

(Testimony of Walter T. Wells.)

Petitioners' Exhibit No. 5 (Continued)

State of California,
County of Los Angeles—ss.

On this 13th day of February, 1936, before me, the subscriber, personally appeared Walter T. Wells, who being duly sworn, did depose and say that he is a resident of Glendale, California; that he is the President of the Technicraft Engineering Corp., and The Lane-Wells Co. of Texas, which executed the foregoing instrument; that he knows the seals of said Corporations, that the seals affixed to said instrument are said corporate seals; that they were thereunto affixed by order of the Boards of Directors of the respective Corporations and that he signed his name thereto by like order.

F. R. SHUMACK,
Notary Public in and for said County and State.

My commission expires Dec. 31, 1939.

[Endorsed]: U. S. B. T. A.

Filed June 5, 1940.

During all of the time that Technicraft did business, Mr. Lane and I, together with our wives, were the owners of all of the stock of the following corporations: Lane-Wells Co., a California corporation, The Lane-Wells Company of Oklahoma, an Oklahoma corporation, The Lane-Wells Company

(Testimony of Walter T. Wells.)

of Texas, a Texas corporation, and Lane-Wells International, Inc., a California corporation. Such stock ownership continued throughout, up until the time that these companies were merged into a new or reorganized company; Lane-Wells Company, a Delaware corporation.

Lane-Wells Co. (California) started out in 1932 originally selling packers and swabs, and swab rubbers purely as a merchandise proposition. We started to find some new products that could be sold in the oil industry either as merchandise or operated as a service. We hit upon the idea for the gun perforator in June, 1932, and started working on it and developing it for oil field service. At that time we organized Technicraft. We organized Technicraft for the purpose of doing all of the engineering and experimental and [352] research work for the Lane-Wells Co. of California and any other companies that might be organized later on.

Technicraft did all of the experimental work. It bought a lot of expensive test instruments. It built many devices that were tried out, some of them only small scale models. As the model was improved upon, a full size model was eventually built. In some cases when a finished product was developed, Technicraft would build the first full size model and sell it to Lane-Wells Co. This was the case with the Stratagraph panel.

At the same time that Technicraft acquired quite a number of patents and patent applications, Mr.

(Testimony of Walter T. Wells.)

Lane and I agreed that we would assign to Technicraft all of the patentable ideas or patent applications that either of us might have. Over the period of time that Technicraft was in business, I assigned some 27 patents and Mr. Lane assigned some 6 or 8 patents. In addition, there were applications for patents by other employees of Technicraft. All Technicraft employees signed a patent contract with Technicraft whereby they agreed to assign all of their inventions to the company where such inventions were covered by the scope of the company's operations. The business of Lane-Wells Co., a California corporation throughout its period of existence was a merchandise and oil field service business. It consisted of operation of the gun perforator, fishing magnet, fishing tools, Stratagraph, which was an electrical logging for casing, and later on logging on or in open holes. The merchandise included packers of different kinds, liner hangers, bridging plugs and pumping devices.

Lane-Wells of Texas conducted the same type of business in [353] Texas and for a while covered Louisiana. Lane-Wells Co. of Oklahoma operated in Oklahoma territories, in the South, in New Mexico fields, as well as Arkansas and Kansas fields. It conducted a business similar to that of Lane-Wells Co. of California, except that it was confined to the particular area named. Lane-Wells International, Inc., conducted the same type of business but in foreign countries, operating in Columbia, Peru, Trinidad and Venezuela.

(Testimony of Walter T. Wells.)

The purpose of gun perforating is the making of holes in the pipe underneath the ground. A gun perforator is built like a pencil and has barrels and chambers and screws at the side. The chambers and barrels are screwed into the side of the gun which shoots out bullets horizontally, which penetrate the casing and the formation behind the casing. The gun is lowered into the well by means of an electric cable passed over a pulley. The cable goes into a truck which is provided with a hoist and is operated by the truck motor and the operator. There are three essential elements in the operation of this service; to-wit, the hoist, the cable and the gun. Originally, the first purpose of gun perforating was thought to be the perforation of oil sands that had been passed up in the early days of drilling. Our first job consisted of perforating these sands to see if anything had actually been passed up. Since that time, however, many new uses have been developed for the gun and I should say that at least 50% of the oil wells today are completed by the use of the gun perforator.

One of the most important methods of drilling today consists of setting a string of casing in the ground, then pumping cement in the back of the casing to fill all of the space between the casing and the formation. Then using the record obtained by [354] electrologing, we go into the well with the gun perforator and shoot through the casing and the cement in the lower oil producing sands first.

(Testimony of Walter T. Wells.)

The cement between the casing and formation shuts off all of the water, and if the holes are put in the right place, no water will be produced with the oil. If the holes are put in the wrong place, however, and the water is produced, it then is a relatively simple matter to go in and cement the gun perforated holes and perforate either further down or higher up until the oil zone is made to produce without water. This was not possible in oil well completion prior to the development of the gun perforator.

The type of truck used in gun perforating is not available from any recognized truck or automobile manufacturer. At the time we entered into the license agreement from Mr. Mims and started in the gun perforating business, there was no truck available for use in this particular service. We had to develop the type of truck and the company that did that developing was Technicraft.

We had to develop a power takeoff unit which was installed in the shaft of the truck so that when a lever was thrown in one position the rear wheels were driven by the motor through the transmission and the truck could operate on the highway. Then when we pulled a well, the operator shifted this lever that disconnected the rear wheels from the truck and connected the truck motor to the hoist and thereafter the truck motor constituted the power necessary for hoisting purposes. That was done back of the transmission, so by using the

(Testimony of Walter T. Wells.)

truck transmission we had a hoist with four speeds as well as a reverse speed. The operator in the control compartment of the truck has a brake, [355] which keeps the gun from lowering into the hole too fast. He has a control panel which has the starting switches of a gasoline engine operated motor generator set, which generates current with which to operate the gun. He also has a throttle control with which to control the truck motor and a tank armature to show the number of revolutions to the truck motor so that he can keep track of the speed. The operator has a weight indicator and if the gun should stop any place going down in the hole, the weight indicator would show less weight and he would know it was not going down. The weight indicator is also used to show whether he may get stuck getting out by reflecting excessive weight. The operator has a measuring device which measures the cable. The cable is measured over a sheave connected with a synchronous motor through a cable to the panel in the truck. The operator has a register which shows him the depth of the gun at all times. The operator also has a loud speaker connected through the same cable to a loud speaker on the derrick floor. This enables voice communication between the derrick floor and the truck operator. This type of device is made necessary because ordinarily there is so much noise around an oil well that without some device of this sort it would not be possible to talk back and

(Testimony of Walter T. Wells.)

forth. The operator has some safety switches so that if the gun is loaded and is lying on the derrick floor he cannot fire the gun until the man in charge of the work on the derrick floor closes the switch and he wouldn't close that switch naturally until after the gun was down in the ground.

None of the developments which I have just described were available to it at the time Lane-Wells Co. secured the license [356] agreement from Mr. Mims. They were all developed by Technicraft.

Thereupon counsel for Petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 6, a diagram taken from a catalog of Lane-Wells Company and used by the witness for the purpose of illustrating the foregoing remarks concerning gun perforating.

At the time that Lane-Wells Co. and Technicraft started in business there was no accurate method of measuring depth of oil wells in connection with oil well operations. There were many arbitrary methods. The only method known at the time to determine the depth at the bottom of a string of casing was a latch jack, which was a couple of fingers that went down and caught underneath the end of the tip of the pipe in the hole. Accurate knowledge of depth measurement of an oil well in the conduct of gun perforating operations is extremely important. In many instances it is the difference between having an oil well and a water

(Testimony of Walter T. Wells.)

well. I recall one instance in Texas where we perforated a well for the first time and got nothing but salt water, and it was about a mile and a half away from the main field. We went back a second time, talked things over with the operator and decided it was due to a possible error in our calculations and that the oil sand should be about eight feet deeper than the place we had perforated. We perforated the well a second time. Instead of being able to get 30 holes as we had intended we only got sixteen and the well started flowing and made about 1500 barrels of oil a day. In this instance, a difference of eight feet had meant the difference between a water well and an oil well. In the East Texas fields six inches is enough to throw you off. Lane-Wells companies use a wire [357] line recording sheave for measuring depth, which was developed for the Lane-Wells companies by Technicraft Engineering Corporation.

Neither the weight indicator nor the measuring device were available to Lane-Wells Co. and Technicraft at the time they started in business. They were both devised and perfected by Technicraft. The truck as presently used by the present Lane-Wells Company for gun perforating purposes is substantially as perfected by Technicraft before the merger and organization of the present Lane-Wells Company, but it has many improvements that have been added to it, which improvements were made by the engineering department of the present company.

(Testimony of Walter T. Wells.)

The former Lane-Wells companies, to-wit, Lane-Wells Co. of California, Lane-Wells International, Inc., the Lane-Wells Company of Oklahoma, and Lane-Wells Company of Texas, had no engineering or research departments, and all engineering, research and development was done for them and made available to them by Technicraft. The Mims patent is but one of a number of patents under which gun perforating is conducted by the present Lane-Wells Company. These other patents were developed and perfected by Mr. Lane and myself and by some of the other fellows at Technicraft. Originally some of the applications were owned by Lane-Wells Co. of California. They were later transferred to Technicraft. While Technicraft was doing business, they owned practically all of the patent applications. The work on all of these was done by Technicraft employees.

The steel line running through a packing gland which made possible safe gun perforating by permitting full control of the [358] well during perforating operations was devised by myself through four or five patent applications, a lot of the work having been done by Technicraft engineers under my direction. I received a salary from Technicraft for engineering services, which salary is shown by the tax returns.

The packing gland was devised by Technicraft. It is a device for perforating a well under pressure while it is flowing, such as in the residential sec-

(Testimony of Walter T. Wells.)

tion, and around the capital of Oklahoma, where wells are close to houses, buildings, etc. It is a safety device to keep any gas or oil from leaking out. The shooter's panel on the Lane-Wells truck together with all of the instruments thereon was devised and perfected by Technicraft.

Thereupon counsel for Petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 7, a sheet containing photographs which were used by the witness to illustrate the matters concerning which he had just testified.

Thereupon counsel for petitioners offered and there was received in evidence, marked Petitioners' Exhibit 8, a document containing photograph of the panel in the gun perforating truck.

Petitioners' Exhibits 8 and 9 consisting of documents containing pictures of the inside of a gun perforating truck panel were taken out of the Lane-Wells monthly magazine for May-June, 1940, and a photograph of the inside of a gun perforating truck taken on February 23, 1935.

Technicraft occupied a large building which was designed particularly for Technicraft and in which Lane-Wells occupied office space.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 10, consisting of a photo-

(Testimony of Walter T. Wells.)

graph taken of the Technicraft building on November 17, 1936.

Technicraft conceived the idea of x-raying the conductor [359] core of a cable before it was manufactured and laid up in the steel line, thus avoiding failures which had previously resulted from cables being unable to withstand high pressure and the dissolution of rubber in the oil and heat. Technicraft developed an x-ray machine which showed whether or not there were any breaks in the copper conductor and whether the rubber installation was of uniform thickness. The idea was so practical that it was later copied by the General Electric Company. To our knowledge, Technicraft was the first to develop the use of the x-ray machine for that purpose.

Thereupon counsel for petitioners offered and there was received, in evidence, marked Petitioners' Exhibit 11, consisting of a photograph taken on April 29, 1936, and showing the operation of the Technicraft x-ray machine in which the conductor core for cable is being x-rayed.

Technicraft did all of the experimental work on Stratagraph and spent some $50,000 or $60,000 on this one development alone. The Stratagraph panel which was developed by Technicraft enabled the lowering of an electrode down into an oil well with the use of the same cable that was used for perforating, and an attempt was then made to measure

(Testimony of Walter T. Wells.)

the natural current that was in the ground. It operated on the theory that different types of formations have different potential value and would let a different amount of current pass through each different formation. As the instrument was pulled out of the well, the recording curve drawing instrument plotted a curve showing the various differences in formation. Technicraft secured a license agreement from Funk and Ennis on the Stratagraph process and in turn permitted the Lane-Wells companies to use the Stratagraph process. I do not think there was any license agreement from Technicraft to the [360] various Lane-Wells companies. Upon receipt of the license agreement from Funk & Ennis, Technicraft undertook to develop the Stratagraph process in the same manner that it did when it acquired the Mims license agreement. Technicraft spent between $50,000 and $60,000 over a period from about November of 1935 until about the middle of the year 1937. At the end of that time, the Lane-Wells companies had had quite a number of commercial jobs, but had never been able to prove that the curve produced by Stratagraph was providing any more information than was already known by geology. For example, an oil well in the Oklahoma City field was brought in on the upper sand based upon a Stratagraph curve. However, in checking the engineering subsequently, we learned that our man in charge of that job was a petroleum engineer and probably would not have

(Testimony of Walter T. Wells.)

put the interpretation on the curve had he not known the geology of the field. Technicraft finally concluded that Stratagraph had not been proved commercially and thereupon abandoned the process. Prior to abandoning the Stratagraph process, Technicraft employed engineers from the California Institute of Technology and even referred the matter to a Swedish company in Stockholm, known as the Electrick Molmletning A. B.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 12, consisting of a photograph of a Stratagraph panel developed by Technicraft.

Technicraft developed a fishing magnet from which is suspended a cone from a rock bit. The magnet is about seven inches in diameter and the cone weighs sixteen pounds.

The interior of the Technicraft building consisted of a main Technicraft shop, various offices around the shop, an electrical experimental laboratory, a chemical laboratory and an x-ray room [361] for x-raying cable.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 13, consisting of a photograph of a portion of the interior of the Technicraft Building.

From time to time Technicraft conducted tests with the gun perforator for the purpose of improv-

(Testimony of Walter T. Wells.)

ing the accuracy and firing ability and for the purpose of improving the penetration of the gun.

It is my opinion that with the Mims license agreement alone, it would not have been possible for Technicraft or the Lane-Wells companies to conduct a successful gun perforating business. Mr. Mims had had his patent from the time he applied for it in 1926 and was not able to accomplish anything with it until we obtained it in 1932. The Mims' patent was a basic patent covering the idea of lowering a gun into a well casing and shooting a bullet out horizontally to perforate the casing. Mims, however, did not know of a steel that was strong enough to withstand the force of the explosion. He did not know how to get enough powder in to get the bullet to go through the pipe. He had no cable on which to run it and had no operating scheme whatsoever. He merely had a broad idea of perforating the casing. Technicraft, in order to perfect the gun filed a great many patent applications on the means of delayed firing, of sealing the gun from the intrusion of water, on firing it underground, so that water pressure was at least 10,000 lbs. pressure per square inch on the gun. Technicraft developed and tested the cable, and developed all the accessories which were used in the truck. In fact, Technicraft developed the entire scheme to the point where it was a commercial possibility. [362]

The electric curve was transmitted through the

(Testimony of Walter T. Wells.)

steel cable. The steel cable was manufactured with the hemp core in the center left out. Technicraft developed a type of copper conductor which could be put in the center in place of the hemp core and secured a patent on that type of construction. This patent on the wire line has been recognized by the American Steel and Wire Company, the Columbia Steel Company and the General Cable Corporation.

The Mims patent itself simply shows a gun with a barrel and a bullet and an electric wire attached to it. It is suspended on an ordinary cable.

At the time of the original license agreement effected between us and Mims, Mr. Lane and I were the officers and directors and all of the stockholders of Technicraft, as well as the Lane-Wells Co. of California. At such time as the Mims license agreement was effected, we did not know how the gun perforator was to be operated, whether it was to be built and sold outright or to be sold as a service, or just how it should be handled. Mr. Lane and I many times that year discussed the formation of a research, engineering and developing company. Mr. Lane had been with the General Electric Company for about 22 years and had had a lot of experience with electrical engineering development. I had been with the Aluminum Company of America and several other large companies doing engineering work. When we entered into our license agreement with Mims, we made up our minds even before that time, that we would set

(Testimony of Walter T. Wells.)

aside a percentage of our income from our business for research and development work. We arbitrarily took 15% because we believed that that would provide sufficient operating capital for Technicraft and we were willing to spend up to 15% [363] on that type of work so that we would always have something new coming out to sell to the oil industry. We had learned that the oil industry is very progressive and that a new thing might be very valuable today and be superseded tomorrow by something new and better. We agreed that we would spend 15% of our income for that type of engineering and research work.

Among the things sold by The Lane-Wells Co. was packers, the patents of which were all held by Technicraft, having been assigned to Technicraft. The improvements thereafter were made by Technicraft and no additional charge was made to Lane-Wells companies for the use of the packers, outside of the 15%, which was provided for by the sublicense agreement on the Mims patent. The only thing that Technicraft received from Lane-Wells Co. was a flat amount of 15% which percentage we picked out because we knew we were going to spread out.

We were going to incorporate in the different states where we did business, and the 15% was arbitrarily taken and we discussed whether we should change it or raise or lower it. No change was ever made and no more license agreements were ever entered into that I recall. Lane-Wells

(Testimony of Walter T. Wells.)

companies received everything from Technicraft for that one charge of 15%.

We had the idea that the 15% would provide a flexible means of collecting an income for Technicraft in proportion to the volume of business done by the companies. As the companies' business went up they would pay more for research work.

Lane-Wells International, Inc., did the same type of business as the other companies, but operated only in foreign countries.

It did about $100,000 worth of business itself the first [364] year. I do not think there was any license agreement between Technicraft and Lane-Wells International, Inc. Technicraft collected 15% from Lane-Wells International, Inc., the same as it did from the other companies.

Although the license agreements between Technicraft and the Lane-Wells Company of Texas and Lane-Wells of Oklahoma both expired in February of 1937, as far as I know there never was any new license agreements executed between Technicraft and these companies. Despite such termination in February of 1937, Lane-Wells of Oklahoma and Lane-Wells of Texas continued to pay 15% of their gross business to Technicraft.

I am familiar with the signatures on the reorganization agreement dated June 1, 1937, which is signed by myself, my wife, Bill Lane, and Hazel Lane. I recognize my signature as president of Lane-Wells Co., a California corporation, Techni-

(Testimony of Walter T. Wells.)

craft Engineering Corp., Alexander Anderson, Inc., Lane-Wells International, Inc., Lane-Wells Company of Oklahoma, Lane-Wells Company of Texas and Lane-Wells Company, a Delaware corporation; and the signature of B. G. Peters as secretary of Lane-Wells Co. of California, Technicraft Engineering Corp., Lane-Wells International, Inc., Lane-Wells Co. of Oklahoma, Lane-Wells Co. of Texas, and Lane-Wells Company, a Delaware corporation; as well as the signature of Wanda G. McGraw as secretary of Alexander Anderson, Inc. On June 1, 1937, all of the stock of these companies was owned by Mr. Lane and his wife and my wife and myself. Alexander Anderson, Inc., was a corporation, the entire stock of which was acquired by Mr. Lane and myself and our wives sometime after our organization. Thereafter, the development and engineering work for that company was done by [365] Technicraft.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 14, consisting of reorganization agreement dated June 1, 1937, hereinabove described.

Prior to the entering into of the reorganization agreement, I had a great many conversations with Mr. Lane with reference to the proposed consolidation. These conversations took place sometimes at his home, some at my home and some at the office of Lane-Wells companies and Technicraft. Some-

(Testimony of Walter T. Wells.)

time in September of 1936, we went to the Trust Department of the Security Bank and asked their advice as to the effect of the death of one of us under the circumstances of the four of us owning all of the stock in the six corporations, none of it ever having been sold. We were told that we were in bad shape and that they could not tell what would happen. That fall I went to Europe and when I returned I got in touch with Raphael Dechter, after having discussed the matter with Mr. Lane. Mr. Dechter made a study of the situation. It took him several weeks. He finally wrote a report which report I discussed with Mr. Lane. As I recall it, there were two courses open to us. We could effect a reorganization in accordance with the state laws of the different states in which we were incorporated, or we could do so under federal regulations. After we got Mr. Dechter's report, there seemed to be no other way of doing it other than in accordance with the Federal Regulations because of certain obstacles in state law, which he told me about, but which I do not remember. Thereupon I talked to Mr. Hass of Hartley Rogers and Company who were investment bankers and brokers, with reference to the sale of some of our stock because it looked like our company was expanding [356] very rapidly. In fact our business was growing so fast it was a problem to provide the necessary money and personnel to take care of the expansion. I discussed reorganization with Mr.

(Testimony of Walter T. Wells.)

Hass who studied it over and told me to get the details worked out and then he would work out some proposition for selling the stock of the company. Lane and I finally agreed that that was what we would do. That we would turn in all of our stock in all of the corporations and form one company that would take over all of the assets. I depended upon Mr. Dechter to take care of the mechanics of the thing and I depended upon Mr. Jeppson to assume responsibility for the accounting and auditing. Mr. Jeppson was our certified public accountant, who at the time was an independent auditor and made a monthly report to us. I was thoroughly familiar with the entire situation. Every step of the reorganization was discussed with Mr. Hass, Mr. Dechter and Mr. Jeppson.

After getting a report from Mr. Dechter, who said it would take a little time to get the reorganization worked out; that we could not simply come to one stopping point and start the next day; and in view of the fact that we owned real estate, automobiles, etc.; that we had to transfer stock and secure permits to issue stock, Mr. Lane and I decided to set the first day of June as the time that we would effect the consolidation. This was done in accordance with the advice of Mr. Dechter and Mr. Jeppson. The mechanics and details were to be worked out just as soon as they could after that, Mr. Dechter handling the legal end and Mr. Jeppson the auditing. I told Mr. Dechter to go

(Testimony of Walter T. Wells.)

ahead and write up the best plan, following our many discussions, and that we would make it effective on the 1st day of June and then clean [367] it up as fast as we could after that. Outside of nominal qualifying shares in Texas, all of the stock of the various Lane-Wells companies was owned by Lane and his wife and me and my wife. The consent of no one other than Mr. and Mrs. Lane, Mrs. Wells and myself was required to the agreement of June 1, 1937. Immediately after the execution of the reorganization agreement, we began negotiations with Hartley Rogers and Company for the sale of 60,000 shares of stock to the public in the new corporation. I had many meetings with Mr. Hass and Mr. Rogers immediately following June 1, 1937, and we discussed some type of underwriting agreement or agency basis upon which the sale of the stock could be handled. We entered into an agreement with Hartley Rogers and Company early in August 1937. [368]

Cross-Examination

W. T. Wells:

Technicraft was formed in 1932 and commenced its business activities some time in 1934 and about which time the Mims patent was assigned to it. Most of the business done by Technicraft is not under the Mims patent. Technicraft spent more money on Stratagraph than it did on the Mims patent. After the acquisition of the patent Technicraft engaged in a great many developments all

(Testimony of Walter T. Wells.)

going at the same time. Possibly more activity was going on on the gun perforator than anything else. A little later the reverse was true when there was more concentrated activity on Stratagraph than anything else. One should not confuse the Mims patent and the gun perforating device. The Mims patent was primarily a paper patent. It was a broad idea with no detail to it. In order to develop a gun per- [369] forating process which would operate commercially, it required the development of many other ideas, but it was necessary to have the basic patent to embrace them all. Technicraft entered into agreements with the various Lane-Wells companies whereby they could operate under the Mims patent and all of the rest of the patents in the patent application for a 15% which we called "royalty." The 15% was measured by the amount of business done by the various companies so as to provide a means of giving Technicraft a revenue in proportion to the volume of business that the individual companies were doing. The various Lane-Wells companies did not receive any licenses to the many other patents developed and acquired by Technicraft, but the said Lane-Wells companies were permitted to use them and the compensation that the companies paid to Technicraft was for the use of the patents, the engineering work and all of the research work. Technicraft permitted the Lane-Wells companies to operate under the methods which were patented to or

(Testimony of Walter T. Wells.)

which Technicraft had acquired rights without any written agreement to that effect. About 8 or 10 of these patents related to gun perforating. By 1937 when we filed a registration statement we had 150 patents or patent applications.

The patents developed by Technicraft did not actually make the Mims patent more effective in its operations in view of the fact that the Mims patent covered an idea which could never be made to operate commercially. Under the Mims patent there was no means of sealing the powder. You could not lower the Mims gun down into 10,000 feet of water without getting the powder wet and you cannot fire a gun if the powder is wet. We filed a patent application on the method of sealing the powder, which is not shown in the Mims patent at all. The use of this method was extended to all of the [370] Lane-Wells companies. At the time the Mims patent was licensed to us it had little value. Mims had not done anything with it for eight years and was willing to let us have it for a $200.00 per month royalty for the lifetime of the patent. The Mims patent had value from an idea standpoint, not from a commercial standpoint. The other patents were valuable for the details to be applied to the Mims patent, but in themselves you could not have operated without the Mims patent. For example, there was nothing in the Mims patent as to how to seal a bullet. We developed such a method. We could not have operated

(Testimony of Walter T. Wells.)

under that one particular patent without having the Mims patent because after all we still were firing the bullet underground.

The income of Technicraft was not based on income from the Mims patent. Technicraft's income was based on use of all patents under that particular group. The Mims patent never became any more valuable because we only had to pay $200.00 per month for the life of the entire patent irrespective of how much business we did.

Technicraft received its income from the Lane-Wells companies for engineering and development fees. It received income from apparatus that was developed and first sold to Lane-Wells as a piece of merchandise. The 15% constituted a measure covering the engineering service fee. The apparatus was sold at a price determined upon the cost and reasonable amount of overhead for Technicraft as well as a small profit. For instance, if Technicraft developed a switchboard panel for the use of the Stratagraph, Technicraft bought all of the test instruments and owned all of same. For example, air meters, voltmeters and galvanometers and instruments of that sort. After developing the panel, Technicraft did test it and when it reached the point where it was considered to be [371] commercially practical and out of the development stage, Technicraft would build a model for the other Lane-Wells companies. Technicraft received 15% of the income of the Lane-Wells companies

(Testimony of Walter T. Wells.)

and in addition would actually be selling some apparatus to them at a fee besides the 15%. For instance, Technicraft might build 8 or 10 test devices and sell them to Lane-Wells. Then as Lane-Wells developed its manufacturing facilities it would take over the manufacture of those things whereupon Technicraft would cease to supply them. Apparatus was sold and billed separately and collected for separately.

I recognize my signature on the 1937 income tax return of Technicraft. In order to explain the manner in which the return was made of the income for sales of merchandise, I would have to discuss the same with Mr. Jeppson who prepared it. The books of Technicraft are in the courtroom and available.

Referring to the developments of the gun perforating process as [372] indicated on Exhibit 8, I would say about 95% of that development had been reached by the close of 1937. The primary apparatus such as the weight indicator, measuring device, the electrical circuits, the switches, the instruments, were all completed prior to the end of 1937. There might have been about 5% representing minor improvements thereafter. These improvements had been put to practical use as early as 1934. Around the first of October, 1937, there were possibly between 85 and 100 patents owned either by Technicraft or to which Technicraft had license agreements and which were all available to Lane-Wells.

(Testimony of Walter T. Wells.)

Not over 7 or 8 of these related to the basic principal covered by the Mims patent. In making that statement, the cable patents, for example, were not related to the Mims patent because the Mims gun was only one device that could be run on the cable. There were hundreds of other devices. The cable was but one way of operating the Mims gun. It was not the only way. It did not work the Mims gun more efficiently because the Mims gun could not work at all. The Mims gun as shown in the drawing of the Mims patent reflects a very small fragmentary gun lowered on a field cable with an electric wire running down along side of it to furnish the electrical energy, with no means of sealing the water out of the bullet and no way in the world by which the gun could operate deeper than you could under water. As far as it is practicable in oil wells, you might lower the gun into the well, but you could never get it out because your cable would be all tangled and snarled. The Mims patent is very broad. With the Mims patent alone you could not perforate an oil well. Mims never did it.

In addition to the Mims patent we operated under the Lane patent for delayed fire and sealing the cartridge in place, keeping the powder dry. That patent was thought to be of considerable value at [373] the time, although today we can get along without it as we have developed other means. The cable patent developed by Technicraft cannot be

(Testimony of Walter T. Wells.)

said to come under the Mims patent as the cable which Technicraft developed, although it could satisfactorily be used in gun perforating, could be used for a hundred other purposes, just as the truck and hoist could be used for a good many other purposes. The delayed fire and sealing was the most important patent.

We always considered our patent structure as of little value except to keep others from doing the things that we desired to do. The success of gun perforating is not necessarily due to the patents but due to its own success, in that the oil industry found that it could do a lot of things that it previously had been unable to do.

Upon being asked whether I believe that 15% was reasonable compensation for the use of the Mims patent and the other patents used in connection therewith, I believe that there was good value received, but it was never looked on in that light.

received, but it was never looked on in that light.

[374]

A packer is a device that is lowered inside of a casing in an oil well with an expansible packing member which expands when set and seals the space between the outer and inner strings of casing. In other words, it is a sealing ring between two strings of casing. It is occasionally used in connection with gun perforating. It has other uses and is an item of merchandise. They are purchased by oil companies and set by the oil companies.

(Testimony of Walter T. Wells.)

Redirect Examination

As of June 1, 1937, there were around seventy-five patents, the use of which was furnished to the Lane-Wells companies by Technicraft. In considering what was reasonable compensation for the use of the patents, I consider $200.00 per month sufficient for the use of the Mims patent because that is what Technicraft paid for it to Mims. I would consider $200.00 per month a reasonable royalty for the use of the Mims idea as covered by the Mims patent at the time I got the license agreement from Mims.

In addition to the packer, Technicraft also devised ideas such as bridging plugs, pump units and various other ideas. All of these ideas as well as ideas and processes were made available to the Lane-Wells companies by Technicraft and the only compensation that Technicraft received for developing these ideas, processes and tools was the 15% of the gross gun perforating business done by the Lane-Wells companies.

I had nothing to do with the keeping of the books and records of Technicraft, as I was but an officer of the corporation and the books were kept by Miss Peters and audited by Mr. Jeppson. I gave no directions as to how entries should be made or anything of that [375] nature. Mr. Jeppson prepared income tax returns and I signed them.

The idea expressed by the Mims patent was that the gun would be fired mechanically. It had been

(Testimony of Walter T. Wells.)

tried out as a mechanical gun but none of the ideas worked. It was not until Technicraft developed the Mims patent that it was made available to the public.

LLOYD SPENCER,

a witness called on behalf of the petitioners, being duly sworn, on direct examination, testified as follows:

Direct Examination

I am a patent attorney and have been engaged as such since 1931. I have also been engaged in doing mechanical engineering work. I know Walter T. Wells and had a conversation with him in the spring of 1934 concerning my being employed by Technicraft. That conversation was at Mr. Wells' office on Santa Fe Avenue, and I believe Mr. Wells and myself were the only ones present. After introductions, I told Mr. Wells my qualifications as a patent attorney and as a draftsman. Mr. Wells outlined the type of position open. He told me he wanted a man to handle the patent work of Technicraft because they were developing a research organization and it would require someone to take care of patents that were to be filed and to protect the ideas that were discovered and invented by members of the organization. Mr. Wells said he wanted someone that could help with some of the drafting and research work; someone who could de-

(Testimony of Lloyd Spencer.)

vote full time to the activities of Technicraft. He took me into the shop and showed me some of the things in the [376] process of development and gave me an idea of the further business of the company.

Mr. Wells said he was primarily interested in developing tools for the oil industry. He specifically mentioned the gun perforator and the magnet. At that time he also showed me an idea concerning a refrigerating packer that was in its inception state. I expressed an interest in the possibility of the position and accepted his offer to come to work for the company.

After going to work for Technicraft I observed the nature of the business and operations. Technicraft was engaged in research work, design work on various devices and services for the oil industry, such as gun perforating, magnet and several other ideas. Mr. Wells called my attention to, and in many instances, had me engage in research before the patent office to determine the patentability of many ideas and in some instances to work out more practical designs from crude sketches that were submitted to me. Among the people who worked for Technicraft at that time were James C. Armond, Mr. Zchokke, Mr. Drake, Mr. Turechek, Mr. Bowsky, Mr. Winter, Mr. Solventine, Mr. Wellington and Mr. Barnes. All of these mentioned were engineers. Some may not have been graduate engineers, but they had experience and were hired as engineers.

(Testimony of Lloyd Spencer.)

I have prepared a list of the various inventions that were owned by Technicraft either on which it secured patents or which it abandoned. This list was prepared from the records and files of Technicraft. An example of one of the ideas included, is that of the bridging plug, which is somewhat similar to a packer, except that it does not seal off between the inner tube and an outer one. It is placed in a casing to form a false bottom in the well. The bridging plug resulted in three patents. Technicraft worked on that patent device. [377]

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 19, a list of patents assigned to Technicraft from the date of the organization of Technicraft up to June 1, 1937.

PETITIONERS' EXHIBIT No. 19

PATENTS OWNED BY TECHNICRAFT ENGINEERING CORP.

Patent No.	Inventor	Invention
2,043,341	G. F. Turechek	Cable head and Method of Construction
2,043,400	W. T. Wells	Conductor Cable
2,043,401	W. T. Wells	Supporting and Conducting Cable and Method of Constructing the same
2,061,862	W. T. Wells	Cable Construction
2,128,547	W. T. Wells	Multiple Conductor Wire Rope
2,167,098	W. T. Wells	Strand-Carried Multiple Conductor Wire Rope
2,133,776	J. C. Bender	Subsurface Prospecting Device

(Testimony of Lloyd Spencer.)

Petitioners' Exhibit No. 19 (Continued)

Patents Owned by Technicraft Engineering Corp.—(Continued)

Patent No.	Inventor	Invention
2,142,555	M. C. Bowsky et al	Automatic Compensator for Geophysical Devices
*1,710,203	W. H. Bustall	Packer
1,734,470	R. B. Kellogg	Packing and Method of Making the Same
1,822,412	G. Meyer	Novel Packer for use with Overshot
1,859,744	G. Meyer	Packer for Oil Wells
1,925,015	W. T. Wells	Formation Packer
1,925,016	W. T. Wells	Packer for Oil Wells
1,925,017	W. T. Wells	Rat-hole Packer
1,926,017	W. T. Wells	Packer
2,033,560	W. T. Wells	Refrigerating Packer
2,033,561	W. T. Wells	Method of Packing Wells
2,033,564	W. T. Wells et al.	By-pass Packer
2,052,786	G. Meyer	Well Packer
2,076,301	G. Meyer	Multiple Ring Packer
2,076,307	W. T. Wells et al.	Bridging Plug
2,076,313	A. J. Zschokke	Bridging Plug and Retrieving Tool Therefor
2,076,314	A. J. Zschokke	Bridging Plug and Setting Tool Therefor
1,582,184	S. W. Mims	Means and Method for Perforating Well Casings
2,029,454	W. T. Wells	Means and Method for Perforating Well Casings
2,029,478	M. W. Haines	Means and Method for Perforating Deep Wells
2,029,490	W. G. Lane	Method and Means for Controlling Deep Well Gunfire for Perforating Casings
2,033,562	W. T. Wells	Method of Preparing Oil Wells for Production
2,048,451	M. O. Johnston	Casing Perforating Gun
2,061,835	M. W. Haines	Ammunition
2,062,974	W. G. Lane	Well Casing Perforator

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(Testimony of Lloyd Spencer.)

Petitioners' Exhibit No. 19 (Continued)

Patents Owned by Technicraft Engineering Corp.—(Continued)

Patent No.	Inventor	Invention
2,062,975	W. G. Lane	Gun Type Well Casing Perforator
2,092,317	W. G. Lane	Gun Perforator Cartridge
2,139,104	W. T. Wells	Pressure Equalizing and Surge Relief Device for Gun Perforator
2,142,583	H. C. Yarbrough	Perforating Gun
Re. 20,832	W. T. Wells	Well Heating Device and Method
1,528,805	J. D. Wade	Hydraulic Pumping Jack
1,944,481	W. T. Wells	Setting Tool for Setting a Liner in an Oil Well or the like
1,987,919	W. T. Wells	Oil Well Tool
2,018,163	W. T. Wells	Heat Exchange Apparatus
2,029,491	W. G. Lane	Gun Type Formation Tester
2,033,563	W. T. Wells	Means for Controlling Well Flow
2,037,896	M. W. Haines	Bottom Hole Gas Bean
2,037,938	Lloyd Spencer	Collar Breaker
2,037,935	W. T. Wells	Means for Splitting Pipe Collars in situ
2,043,340	L. C. Tilbury et al.	Well Cleaner
2,061,863	W. T. Wells	Weight and Tension Measuring Device
2,061,864	W. T. Wells	Electrically Operated Fishing Tool
2,061,865	W. T. Wells	Water Educator and Method
2,092,316	W. G. Lane	Oil Well Fishing Magnet
2,092,337	Lloyd Spencer	Formation Testing Apparatus
2,092,338	Lloyd Spencer	Formation Tester
2,118,991	G. F. Turechek et al.	Electrohydraulic Fishing Tool

[Endorsed]: U. S. B. T. A. Filed June 5, 1940.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 20, a list of abandoned and unfiled inventions owned by Technicraft, which

(Testimony of Lloyd Spencer.)

had been worked upon by Technicraft but which had proven to be unsuccessful or unpatentable.

PETITIONERS' EXHIBIT No. 20

ABANDONED AND UNFILED INVENTIONS OWNED BY TECHNICRAFT ENGINEERING CORP.

Inventor	Invention	Serial No.	Filed
W. T. Wells	Packing Ring and Method of Making Same	614,730	June 1, 1932
W. T. Wells	Method of Opening Oil-bearing Formation to Produce Therefrom	646,613	Dec. 10, 1932
G. F. Turechek	Liquid Level Indicator for Wells	137,005	Apr. 15, 1937
Lloyd Spencer	Well Pressure and Temperature Gauge	85,759	June 17, 1936
E. R. Smith	Pump Valve	742,647	Sept. 4, 1934
H. J. Quintrell	Swab	177,564	Mar. 23, 1927
W. G. Lane	Cable Length and Tension Measuring Device	694,604	Oct. 21, 1933
W. G. Lane	Controllers for Perforator Guns	747,714	Oct. 10, 1934
M. W. Haines	Means and Method of Controlling the Gas-Oil Ratio of a Well	38,242	Aug. 28, 1935
F. M. Collins	Gauge Apparatus for Pressure Wells	281,742	May 31, 1928
J. C. Arnold	Automatic Control Unit	119,049	Jun. 4, 1937
W. T. Wells	Well Control Unit	631,782	Sept. 6, 1932
W. T. Wells	Formation Packer	642,370	Nov. 12, 1932
E. R. Smith	Fishing Magnet Head	—	—
Lloyd Spencer	Refrigerating Means for Wells	—	—
J. D. Wolff	Internal Combustion Engine	—	—
E. R. Smith	Magnetic Bailer	—	—
H. J. Quintrell	Fishing Tool	—	—
Wells & Haines	Well Washer	—	—

[Endorsed]: U. S. B. T. A. Filed June 5, 1940.

(Testimony of Lloyd Spencer.)

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 21, a list of assignments of inventions and bearing data compiled from the records of Technicraft.

PETITIONERS' EXHIBIT No. 21

ASSIGNMENTS OF INVENTIONS TO TECHNICRAFT ENGINEERING CORP.

Assignee	Invention	Serial or Patent No.	Date Assigned
J. C. Bender	Stratograph	64,484	July 28, 1936
M. C. Bowsky et al.	Automatic Compensator for Geophysical Devices	58,864	Jan. 6, 1936
M. W. Haines	Ammunition	2,061,835	Jan. 4, 1937
M. W. Haines	Means and Method of Perforating Deep Wells	2,029,478	Jan. 4, 1937
M. W. Haines	Means and Method of Perforating Deep Wells	—	Sept. 26, 1934
M. W. Haines	Bottom Hole Gas Bean	—	Sept. 26, 1934
W. G. Lane	Gun Type Well Casing Perforator	31,684	Oct. 17, 1935
W. G. Lane	Gun Perforator Cartridge	31,685	Oct. 17, 1935
W. G. Lane et al.	Controllers for Perforator Guns	747,714	Dec. 28, 1934
T. E. McMahan	Deflecting Tool	130,888	June 25, 1937
G. Meyer	Novel Packer for use with Overshot	1,822,412	July 14, 1936
G. Meyer	Well Packer	19,834	July 14, 1936
G. Meyer	Multiple Ring Packer	19,835	July 14, 1936
G. Meyer	Packer for Oil Wells	1,859,744	May 12, 1934
G. F. Turechek	Gun Unit for Gun Perforators	27,024	Oct. 1, 1935
G. F. Turechek	Cable Head and Method of Construction	740,670	Aug. 27, 1934
E. R. Smith	Pump Valve	—	Aug. 27, 1934
G. F. Turechek et al.	Electrohydraulic Fishing Tool	—	Aug. 27, 1934

(Testimony of Lloyd Spencer.)

Petitioners' Exhibit No. 21 (Continued)

Assignments of Inventions to Technicraft Engineering Corp.—(Contd.)

Assignee	Invention	Serial or Patent No.	Date Assigned
L. C. Tilbury et al.	Well Cleaner	—	Mar. 31, 1934
J. D. Wade	Hydraulic Pumping Jack	1,528,805	May 8, 1936
W. T. Wells	Pressure Equalizing and Surge Relief Device and Method for Gun Perforator	64,006	June 2, 1936
W. T. Wells	Well Heating Device and Method	64,007	June 2, 1936
W. T. Wells	Strand-carried Multiple Conductor Wire Rope	50,651	Jan. 6, 1936
W. T. Wells	Multiple Conductor Wire Rope	41,456.	Oct. 2, 1935
W. T. Wells et al.	By-Pass Packer Head	5,044	Apr. 5, 1935
Lloyd Spencer	Collar Breaker	747,803	Apr. 5, 1935
Lloyd Spencer	Formation Testing Apparatus	19,247	Apr. 5, 1935
Lloyd Spencer	Formation Tester	19,248	Apr. 5, 1935
W. T. Wells et al.	Bridging Plug	17,466	Apr. 5, 1935
W. T. Wells	Formation Packer	1,925,015	Oct. 8, 1934
" " "	Packer for Oil Wells	1,925,016	" " "
" " "	Rat-hole Packer	1,925,017	" " "
" " "	Packer	1,926,017	" " "
W. T. Wells	Setting Tool for Setting a Liner in an Oil Well or the like	1,944,481	Oct. 8, 1934
" " "	Conductor Cable and Method of Manufacture	662,901	" " "
" " "	Cable Construction	648,037	" " "
" " "	Oil Well Tool	631,781	" " "
" " "	Packing Ring and Method of Making Same	614,730	" " "
" " "	Weight and Tension Measuring Device	694,564	" " "
" " "	Means for Packing Oil Wells and the like; renewed and title changed to Refrigerating Packer	642,369	" " "

(Testimony of Lloyd Spencer.)

Petitioners' Exhibit No. 21 (Continued)

Assignments of Inventions to Technicraft Engineering Corp.—(Contd.)

Assignee	Invention	Serial or Patent No.	Date Assigned
" " "	Method of Packing Wells	734,170	" "
" " "	Supporting and Conducting Cable and Method of Constructing the Same	734,169	" "
" " "	Heat Exchange Apparatus	735,214	" "
" " "	Water Eductor and Method	735,212	" "
" " "	Electrically Operated Fishing Tool	735,211	" "
" " "	Means and Method of Perforating Well Casing	734,171	" "
" " "	Means and Method of Splitting Pipe Collars in situ	735,213	" "
W. T. Wells	Method of Preparing Oil Wells for Production	736,533	Oct. 8, 19
" " "	Method and Means for Controlling Well Flow	741,399	" "
W. G. Lane	Oil Well Fishing Magnets	694,603	
" " "	Ammunition (½ Interest)	642,407	" "
" " "	Packer for Oil Wells	355,288	" "
" " "	Packer	1,710,203	" "
" " "	Method and Means for Controlling Deep Well Gunfire for Perforating Casing	648,049	" "
W. G. Lane	Well Casing Perforator	642,410	Oct. 8, 19
" " "	Gun Type Formation Tester	741,409	" "
Lane-Wells Co.	Indicating Means for Wells	1,822,203	" "
" "		281,742	" "
" "	Packing and Method of Making the same	1,734,470	" "
A. J. Zschokke	Bridging Plug and Retrieving Tool therefor	31,391	Oct. 1, 19
A. J. Zschokke	Bridging Plug and Setting Tool therefor	31,392	Oct. 1, 19

[Endorsed]: U. S. B. T. A. Filed June 5, 1940.

(Testimony of Lloyd Spencer.)

Referring to the names of Bowsky, Turechek and E. R. Smith appearing on the last three exhibits, these people worked for Technicraft and worked in the same room with me. I assume they were paid by Technicraft as I knew they worked for Technicraft.

On some of the other devices that were assigned to Technicraft such as the assignment by M. W. Haines, Technicraft performed work on such process in perfecting or improving it after it had been assigned to Technicraft by Mr. Haines. Referring to the list of assignments, Technicraft utilized labor and expended money in connection with each one of the particular inventions contained in Petitioners' Exhibits 19, 20 and 21.

Cross-Examination

The purpose of Technicraft was to conduct experiments, develop patentable ideas, obtain patents and carry on engineering work so that the devices would have commercial use and value.

I prepared the assignments of patents to Technicraft and prepared them for the signature of the inventors. They thereupon became the property of Technicraft. I am not familiar with the accounting or whether Technicraft received any compensation for such use by [378] the Lane-Wells companies.

Redirect Examination

I know that Technicraft spent time and money on processing tools that were used by Lane-Wells

(Testimony of Lloyd Spencer.)

companies, which were not patentable. Time and money were spent on improvements, the nature of which were not patentable, but which were of use to the Lane-Wells companies. Technicraft engaged in some manufacturing, but it was largely incidental to research, in the sense that after a produce was developed, several were made to see whether or not it was really practicable. Sometimes this is part of research work. It may be commercial or not.

D. S. JEPPSON,

a witness called on behalf of petitioners, being duly sworn, on direct examination, testified as follows:

I am comptroller of Lane-Wells Company and have been acting as such since April of 1939. Prior to that time I was a Certified Public Accountant and had been engaged as such for approximately fifteen years. I was certified by the Board of Accountancy of the State of California and as a Certified Public Accountant, one of my clients was Technicraft Engineering Corporation. I heard Mr. Wells testify that Technicraft received a certain income from the sale of models and apparatuses created by Technicraft in connection with the development of ideas, processes and tools sold to the Lane-Wells companies. As to each individual development, research problem or process, it was given an

(Testimony of D. S. Jeppson.)

account number, and that account was charged with all research, development and engineering expense over a period that the project was active. When models were made, sometimes there were several made before a satisfactory one was [379] developed and sometimes no satisfactory models were ever developed. When these models were made, the cost of labor, materials, and other costs which went into the making of the model, was charged to the proper project account. In certain circumstances, a completed model or models were sold to the Lane-Wells companies and the approximate or estimated cost of that model or models was credited to the project or development account to which it related. It is this approximate cost that Technicraft received from the Lane-Wells companies.

Either I or one of my assistants prepared all of the income tax returns of the various Lane-Wells companies and Technicraft.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 22, income tax return of Technicraft Engineering Corporation, for the calendar year 1934

Form 1120
TREASURY DEPARTMENT
Internal Revenue Service

Collector's Number

FORM 1004 MUST BE FILED WITH THIS RETURN

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN

For Calendar Year 1934

Page 1 of Return

File Code

or Fiscal Year beginning 1934, and ended 1935

Serial Number 401537

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

TRANSIGRAFT ENGINEERING CORPORATION

4439 SANTA FE AVE.,

LOS ANGELES, CALIFORNIA.

Date of Incorporation 1934

Under the Laws of United States or Country CALIFORNIA

The Corporation's Books are in Care of SAME Address SAME

Kind of Business (In detail) ENGINEERING

Is a Foreign Corporation, State Whether Resident or Nonresident

Is the Corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1934? NO

ATTACH REMITTANCE HERE

GROSS INCOME

Line and Schedule No.

1 Gross Sales (where inventories are not an income determining factor) $

2 Less Cost of Gross Sales

(a) Inventory at beginning of year $

(b) Material or merchandise bought for resale $

(c) Miscellaneous costs (from schedule) $

(1) Salaries and wages $ (2) Other costs $

(d) Total of items (a), (b), and (c) $

(e) Less inventory at end of year $

4 Gross Profit from Sales (Item 1 minus Item 3) $

5 Gross Receipts (where inventories are not an income determining factor) $

6 Less cost of operations (from schedule) $

(a) Salaries and wages $ (b) Other costs $

7 Gross Profit (where inventories are not an income determining factor) (Item 5 minus Item 6) $

8 Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.

9 Rents

10 Royalties 27,165.23

11 Capital Gain or Loss (from schedule)

12 Interest on Liberty Bonds, etc. (from schedule)

13 Dividends on Stock of

(a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1934

(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1934

(c) Foreign Corporations

14 Other Income (from schedule)

15 Total Income (Items 4 to 14 inclusive) 27,165.23

DEDUCTIONS

16 Compensation of Officers (from schedule) 10,000.00

17 Rent on Business Property

18 Repairs (from schedule)

19 Interest

20 Taxes (from schedule) 275.28

21 Losses by Fire, Storm, etc. (from schedule)

22 Bad Debts (from schedule)

23 Dividends (from schedule)

24 Depreciation (including Depletion of Mines, Oil and Gas Wells Under Section 114)

25 Depletion of Mines, Oil and Gas Wells Under Section 114

ATTACH REMITTANCE HERE

GROSS INCOME

DEDUCTIONS

SCHEDULE E - BALANCE SHEETS (See Instructions 14)

	Beginning of Taxable Year		End of Taxable Year	
ASSETS				
1 Cash				11 183.78
2 Notes				
3 Accounts			1 669.22	1 669.22
4 Inventories				
a Raw materials				
b Work in process				
c Finished goods				
d Supplies				
Investments				
5 Obligations of domestic corporations				
6 Other investments				
7 Depreciable assets				
8 Less				
Net				
9 Depletable assets				
10 Less				
Net				
11 Land			392.00	392.00
12 Other assets				
13 Total assets				29 303.29
LIABILITIES				
14 Accounts payable				
15 Mortgages, notes, bonds payable				
16 Other liabilities				
17 Capital stock				30 038.29
18 Surplus				
19 Total liabilities				1 076.00

	[illegible]	[illegible]
		[illegible]
		[illegible]

SCHEDULE L RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

	15 732 99		
		PATENT AMORTIZATION	10 000 00
		INCOME TAXES	2 359 95
1. Total of Lines 1 to 4 inclusive	15 732 99		
6. Total from Line 5	12 359 95		
7. Net profit or loss for year as shown by books before any adjustment against net profit (Line 1 minus Line 6)	3 373 04		12 359 95
8. Surplus and undivided profits as shown by balance sheet at beginning of preceding taxable year			
9. Other credits to surplus to be detailed			
10. Total (Line 7 plus Line 9)	3 373 04		
11. Total from Line 8			
12. Surplus and undivided profits as shown by balance sheet at end of taxable year (Line 10 minus Line 11)	3 373 04		

NET INCOME (OR DEFICIT) REPORTED IN RETURN FOR CALENDAR YEAR OR FOR FISCAL YEAR ON

1. Net income $ NONE

NATURE OF BUSINESS

2. Check the block to indicate the industrial group in which the principal business is conducted

MANUFACTURING

Food and kindred products

Textile mill products

Apparel, finished products from fabrics and similar materials

Lumber and wood products, except furniture

Furniture and fixtures

Paper and allied products

Printing, publishing and allied industries

Chemicals and allied products

Petroleum refining and related industries

Rubber products

Leather and leather products

Stone, clay and glass products

Primary metal industries

Fabricated metal products, except machinery and transportation equipment

Machinery, except electrical

Electrical machinery, equipment and supplies

Transportation equipment

Instruments and related products

Miscellaneous manufacturing

Ordnance and accessories

Aircraft and parts

Aircraft engines and parts

Aircraft equipment

Missiles and parts

Spacecraft and parts

Spacecraft equipment

Ordnance and accessories

Other manufacturing

MANUFACTURING

Motor vehicles and equipment

Other transportation equipment

Instruments and related equipment

Motor vehicles, new parts and equipment

Machinery, factory, shop and farm, including tractors, except electrical, except construction, except farm

Machinery, agricultural and equipment

Machinery, construction and equipment

Machinery, office, building, commercial, except electrical, except construction, except farm

Miscellaneous equipment, except furniture, except electrical, except construction, except farm

Office equipment

Motor building materials and equipment

Plumbing, heating, etc.

Electrical motor products and processes

Other motor products and processes

Miscellaneous manufacturing

Building complete or parts

Miscellaneous equipment, except electrical, except construction, except farm

Miscellaneous equipment, except electrical, except construction, except farm

PRODUCTS OR SERVICES

Wholesale trade

Retail trade

Transportation

Communication

Electric, gas, water and other public utilities

Finance, insurance and real estate

Service industries

Other industries

BASIS OF RETURN

ACCRUAL

VALUATION OF INVENTORIES

NONE

5. Total of Lines 1 to 4, inclusive 15 732 99

6. Total from Line 11 12 359 95

7. Net profit or loss for year as shown by books, before any adjustments are made thereon (Line 5 minus Line 6) [illegible] 3 373 04

8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year

9. Other credits to surplus (to be itemized)

10. Total of Lines 7 to 9, inclusive 3 373 04

11. Total from Line [illegible]

12. Surplus and undivided profits as shown by balance sheet at close of taxable year [illegible] 3 373 04

NET INCOME (OR DEFICIT) REPORTED IN RETURN FOR CALENDAR YEAR 194_ OR FISCAL YEAR 194_

1. Net income $ (or deficit) $ NONE

NATURE OF BUSINESS

2. Check the block to indicate the industrial division in which the principal income-producing business falls.

[Agriculture and related industries, including fishing, forestry [illegible] properties

[Mining and quarrying, including gas and oil wells [illegible] properties

MANUFACTURING

Food and kindred products:

[Bakery and confectionery products

[Canned products (fish, fruit, vegetables, [illegible])

[Mill products, grain, flour, etc.

[Packing house products, meats, lard, slaughtering

[Sugar, [illegible] refining

[Other food products [illegible]

[Beverages, soft drinks, mineral water

[Brewing and distilling [illegible]

[Tobacco products

Textiles:

[Cotton goods [illegible] dyeing

[Woolen and worsted goods [illegible]

[Silk and rayon goods [illegible]

[Carpets, floor coverings [illegible]

[Other textiles [illegible]

[[illegible]

[Fur goods [illegible]

[Leather, boots, shoes [illegible]

[Other leather products [illegible]

Rubber tires and tubes

[Other rubber goods [illegible]

[Forest and wood products [illegible]

[Sawmill and planing mill products

[Other wood products [illegible]

[Paper, pulp and products

[Printing, publishing, and allied industries

[X] Petroleum and other mineral oil refining and products

[Chemicals proper [illegible]

[Allied chemical substances, drugs [illegible]

[Paints, pigments, varnishes, etc.

[Fertilizers

[Stone, clay, glass and related products

MANUFACTURING (continued)

Metal products and processes:

[Iron and steel [illegible]

[Locomotives and railroad equipment

[Motor vehicles, complete or parts

[Machinery, factory [illegible]

[Machinery, agricultural and equipment

[Machinery, electrical and equipment

[Machinery, other, building, construction, oil and mining machinery and equipment

[Household equipment [illegible]

[Office equipment

[Other building material and equipment

[Hardware, tools, etc.

[Precious metal products and processes

[Other metal products and processes

Miscellaneous manufacturing:

[Railway [illegible]

[[illegible]

[Airplanes [illegible]

[Construction [illegible]

[Transportation [illegible]

[Public utilities [illegible]

[Storage [illegible]

[Trade

[[illegible]

[Service

[[illegible]

[Finance

12 359 95

NONE

AFFILIATIONS WITH OTHER CORPORATIONS [illegible]

[illegible] NO

[illegible] NO

[illegible] BUSINESS

[illegible] NO

[illegible] NO

BASIS OF RETURN NO

ACCRUAL

VALUATION OF INVENTORIES

NONE

PREPARATION OF RETURN [illegible]

YES

C. S. [illegible] C. P. A. AND ASSOCIATES, 539 So. [illegible] St., Los Angeles, Calif.

LIST OF ATTACHED SCHEDULES

0-3

Page [illegible] of Return

SCHEDULE A [illegible]

Item	Amount
Salaries and wages	$
Other costs	

Item	Amount
Salaries and wages	$
Other costs	

SCHEDULE B CAPITAL GAINS AND LOSSES (See Instruction 10)

Description of Property	Date Acquired	Date Sold	Cost or Basis	Gross Sales Price	Net Gain or Loss Reported on Schedule D, Form 1040	Net Gain or Loss Allowable in Schedule D, Form 1040	Net Gain or Loss Reported on Form 1040
			$	$	$	$	$

Net Gain or Loss (enter as Item 10). Capital losses are allowable only to the extent of $2,000 plus capital gains. $

State how property was acquired. If whether at time of sale or exchange purchasers received stock [illegible] in value of your outstanding stock.

Every sale or exchange of stock should be reported in detail, including name and address of corporation, class of stock, number of shares, capital [illegible] affecting [illegible] stock dividends, other contracts or dividends, stock rights, etc.

Cost of property must be entered in column 5 if a loss is claimed in column 9.

SCHEDULE C COMPENSATION OF OFFICERS (See Instruction 13)

Name of Officer	Office Held	Time Devoted to Business	Salary	Fees	Total
E. W. LANE		ALL			$ 5,000.00
E. T. BELLS		ALL			5,000.00

Name of officer [illegible] compensation in excess of $1,000 was paid to any officer or employee.

SCHEDULE D COST OF REPAIRS (See Instruction 17)

Item	Amount
Salaries and wages	$
Other costs	

SCHEDULE E TAXES PAID (See Instruction 17)

Item	Amount
CAPITAL STOCK TAX	$ 250.00
CALIFORNIA FRANCHISE TAX	25.00
CHECK TAX	2.28
	277.28

SCHEDULE F EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. (See Instruction 20)

Kind of Property	Date Acquired	Date Sold	Depreciation Allowed	Depreciation Allowable	Depreciation Allowable Since Acquisition	Depreciation Allowable Since Acquisition
			$	$	$	$

State how property was acquired

SCHEDULE G BAD DEBTS (See Instruction 21)

Year	Bad Debts Accrued	Bad Debts Paid
1930	$	$
1931		
1932		
1933		
1934		

SCHEDULE H INCOME FROM DIVIDENDS (See Instruction 12)

Describe below all dividends received during the year showing the amount and the name and address of the corporation which declared the dividend.

SCHEDULE I EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 23)

Kind of Property	Date Acquired	Cost or Basis (Not Including Land)	Depreciation Allowable Since Acquisition	Depreciation Allowable for Current Year	Depreciation Allowable Since Acquisition	Depreciation Allowable Since Acquisition	Depreciation Allowable Since Acquisition
		$	$	$	$	$	$

SCHEDULE J INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 11)

SCHEDULE C COMPENSATION OF OFFICERS (See Instruction 6)

Name of officers	Office	Time Devoted to Business	Amount of compensation	
			Common	Preferred
E. W. LAMB		ALL		$ 5 000 00
W. T. WELLS		ALL		$ 5 000 00

Note: Schedule C must be completed if any officer's compensation in excess of $15,000 was paid to any officer or employee.

SCHEDULE D COST OF REPAIRS (See Instruction 7)

Item	Amount
Materials and wages	$
Other costs	

SCHEDULE E TAXES PAID (See Instruction 8)

Item	Amount
CAPITAL STOCK TAX	$ 250 00
CALIFORNIA FRANCHISE TAX	25 00
CHECK TAX	2 28
	277 28

SCHEDULE F EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. (See Instruction 10)

Kind of property	Date acquired	Cost	Depreciation Sustained	Depreciation allowed since Acquisition	Depreciation allowable Taxable Year	Depreciation Allowable Prior Years
		$	$	$	$	$

State how property was acquired

SCHEDULE G BAD DEBTS (See Instruction 2)

Year	Amount Accrued	Amount Collected
1930	$	$
1931		
1932		
1933		
1934		

SCHEDULE H INCOME FROM DIVIDENDS (See Instruction 11)

Name or kind of dividends received during the year showing the amount and the name and address of the corporation which declared the dividend

SCHEDULE I EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 12)

Kind of Property (Buildings, machinery, furniture, etc.)	Date Acquired	Cost or Value Jan. 1, 1932	Allowance Plus Depreciation in Prior Years	Depreciation Allowable in Taxable Year	Depreciation Allowable Prior Years	Estimated Life or Average Life Before Depreciation Was	Remaining Life Prior Depreciation or Taxable Year	Depreciation Allowable This Year
		$	$	$	$			$

SCHEDULE J INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 13)

Description of Obligation	Interest Accrued	Interest Received or Accrued	Payment Made Taxable Year	Amortization or Earned or Discounted	Interest on Bonds Taxable Year
1. Obligations of the United States or possessions authorized thereof or the District of Columbia or other State obligations	$	$	All		
2. Obligations issued under Federal Farm Loan Act or under such act as amended			All		
3. Liberty bonds and other obligations of United States issued on or before Sept. 1, 1918			All		
4. Treasury notes, Treasury bills and Treasury certificates of indebtedness			All		
5. Liberty bonds and Treasury bonds. Obligations of other corporations the interest from which is not taxable			All		
Totals		$			$

AFFIDAVIT (See Instruction 30)

We, the undersigned president or vice president or other principal officer and treasurer or assistant treasurer or chief accounting officer of the corporation for which this return is made, being severally duly sworn each for himself, depose and says that the return, including the accompanying schedules and statements, if any, has been examined by us, to the best of our knowledge and belief a true, correct and complete return, made in good faith, for the taxable year stated. Pursuant to the Revenue Act of 1926 and the Regulations issued thereunder.

Sworn to and subscribed before me this 15th day of March 1933.

NOTARIAL SEAL

Notary Public

CORPORATE SEAL

President

Treasurer, Assistant Treasurer or Chief Accounting Officer

AFFIDAVIT (See Instruction 5)

I, the undersigned, do affirm that I have prepared this return for the person named herein and that the return, including its accompanying schedules and statements, if any, is a true, correct and complete statement of all the information respecting the income tax and of other matters pertaining the liability of the person for whom this return has been prepared, of which I have any knowledge.

Sworn to and subscribed before me this 15th day of March 1933.

NOTARIAL SEAL

Notary Public

Preparer of the return

14

1934 RETURN

OF

CAPITAL STOCK TAX

For year ending June 30, 1934

DOMESTIC CORPORATIONS

Name: TERRA-CRAFT ENGINEERING CORPORATION

Address: [illegible] SANTA FE AVENUE, LOS ANGELES, CALIFORNIA

Name of parent company: [illegible]

Name of subsidiary: [illegible]

Nature of business: OIL TOOLS DEVELOPMENT AND ENGINEERING

Incorporated in [illegible] CALIFORNIA

DECLARATION OF THE TAX OF THE [illegible]

[illegible]

[illegible]

SECTION 701. EXCESS PROFITS TAX

(a) There is hereby imposed upon the net income of every corporation for each taxable year ending on or after [illegible] a tax equal to [illegible] per centum of the adjusted declared value of the capital stock of such corporation, plus the adjusted declared value of capital employed in the transaction of its business in excess of the preceding average net income for one of the base periods specified in section 702, as shown on its return for the taxable year, but in no case shall such tax be in excess of [illegible] per centum of the adjusted declared value of the capital stock of such corporation plus the adjusted declared value of capital employed in the transaction of its business in excess of the preceding average net income for one of the base periods specified in section 702. [illegible] For the purposes of this section the net income shall be the same as the net income for purposes of section 701 for the year in respect of which the tax under this section is imposed.

(b) All provisions of law (including penalties) applicable in respect of the taxes imposed by [illegible] shall be applicable in respect of the tax imposed by this section, except that the provisions of section [illegible] shall not be applicable.

SECTION 702. CAPITAL-STOCK TAX AND EXCESS-PROFITS TAX IMPOSED BY NATIONAL INDUSTRIAL RECOVERY ACT

Sections [illegible] of the National Industrial Recovery Act are amended to read as follows:

"(a) The capital-stock tax imposed by section 214 shall not apply to any taxpayer in respect of any year ending on or after June 30, 1934.

"(b) The excess-profits tax imposed by section 215 shall not apply to any taxpayer in respect of any taxable year ending after June 30, 1934.

(Testimony of D. S. Jeppson.)

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 23, income tax return of Technicraft Engineering Corporation, for the calendar year 1935.

RETURN FORM MARKED "DUPLICATE" MUST BE FILED WITH THIS ORIGINAL RETURN

Page 1 of Return

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN

For Calendar Year 1935

FILED

408021

MAR 16 1936

TECHNICRAFT ENGINEERING CORP.

8839 SANTA FE AVENUE,

LOS ANGELES, CALIFORNIA.

Date of Incorporation 1935

Under the Laws of what State or Country CALIFORNIA

B. W. PETERS

8839 SANTA FE AVE.

GROSS INCOME

72 177.19

2 600.00

JUL 28 1936

204.22

74.25

10/3/36

DEDUCTIONS

LEGAL AND AUDITING

TRAVEL 218.62

ATTACH REMITTANCE HERE

GROSS INCOME

72 177 19

2600.00 2 600 00

63 577 19

204.72 13 90

Interest

74.25

DEDUCTIONS

1 840 00

23

13-T

SCHEDULE B BALANCE SHEETS

			1 564 15	
	11 143 78	11 143 78	50 00	1 564 15
	8 619 22	8 619 22	22 589 08	22 589 08
	392 100	392 00		
			100 [illegible]	100 [illegible]
			220 00	
			220 00	
			16 590	[illegible]
				10 366 77
		29 [illegible] 99		[illegible]
			2 [illegible] 100	
			4 [illegible] 57	
			2 000 100	[illegible]
		70 [illegible] 99		[illegible]

	592.00	592.00		
			100.00	100.00
			220.00	
			220.00	
			16.50	[illegible]
				[illegible]
		25,303.99		[illegible]
			[illegible]	
			[illegible]	
			2,000.00	[illegible]
		70,078.99		[illegible]
		1,076.00		
		7,500.00	2,250.00	2,250.00
	[illegible]	[illegible]	[illegible]	[illegible]
		25,000.00	25,000.00	25,000.00
		[illegible]	5,660.71	5,660.71
		[illegible]		[illegible]

K-2

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

[illegible]	[illegible]
[illegible]	2 163 29
[illegible]	7 337 19
[illegible]	36 240 05
[illegible]	[illegible]
[illegible]	2 287 67
[illegible]	3 373 04
[illegible]	5 660 71
[illegible]	5 660 71
[illegible]	[illegible]

NATURE OF BUSINESS

[illegible]

AFFILIATIONS WITH OTHER CORPORATIONS

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

ACCRUAL

[illegible]

[illegible]	48 028 20
[illegible]	18 790 53
[illegible]	2 287 67
[illegible]	3 373 04
[illegible]	5 660 71
[illegible]	5 660 71

RESERVE FOR TAXES AND LITIGATION 36 280 05

43 790 53

NATURE OF BUSINESS

MANUFACTURING

MANUFACTURING (Continued)

NON-MANUFACTURING

AFFILIATIONS WITH OTHER CORPORATIONS

NO

FOREIGN EXCHANGE

YES

NO

NO

ACCRUAL

YES

D. S. JEFFERY, [illegible] AND [illegible] SO. SPRING [illegible]

NO

SCHEDULE I

B-3

SCHEDULE A [illegible]

[illegible]	[illegible]	[illegible]	[illegible]
ROYALTIES PAID			2 600 00

SCHEDULE B [illegible] INCOME FROM SALES OR EXCHANGES ONLY [illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

[illegible] of main or exchange producers earned more than 20%

[illegible] number of shares, capital changes effect

[illegible] COMPENSATION OF OFFICERS [illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
W. T. [illegible]	PRES	ALL	[illegible]	5 000 00
[illegible]	VICE PRES	ALL	[illegible]	5 000 00
				10 000 00

[illegible] $[illegible] was paid to any officer or employee

SCHEDULE E TAXES PAID [illegible]

[illegible]	[illegible]
CAPITAL STOCK TAX	[illegible]
STATE FRANCHISE	[illegible]
MISCELLANEOUS	[illegible]
	[illegible]

SCHEDULE F EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, ETHERM, ETC. [illegible]

[illegible]	[illegible]	[illegible]	[illegible]

SCHEDULE G [illegible] INCOME FROM DIVIDENDS [illegible]

[illegible]

[illegible]

SCHEDULE I EXPLANATION OF DEDUCTION FOR DEPRECIATION [illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	220 00	10 YR	10 YRS	14 50
[illegible]						2 075 72
						2 090 22

[illegible]	PRES	ALL	5 000.00
[illegible]	VICE PRES	ALL	5 000.00
			10 000.00

SCHEDULE E TAXES PAID (See Instruction 10)

CAPITAL STOCK TAX	[illegible]
STATE FRANCHISE	[illegible]
[illegible]	[illegible]
	[illegible]

SCHEDULE F: EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. (See Instruction 20)

SCHEDULE G: [illegible] INCOME FROM DIVIDENDS (See Instruction 13)

SCHEDULE H: EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

[illegible]			220.00	10 YR	10 YR	22.00
						2 673.30
						2 695.27

AFFIDAVIT (See Instruction 21)

[illegible] MAJOR [illegible]

NOTARY PUBLIC

AFFIDAVIT (See Instruction 21)

[illegible] MAJOR [illegible]

NOTARY PUBLIC

[illegible] ENGINEERING CORPORATION

1952

DEPRECIATION SCHEDULE

REMARKS
FRANCHISE
ABANDONED
PATENT DATE [illegible]
PATENT DATE [illegible]
ABANDONED
PATENT DATED [illegible]
PATENT DATED [illegible]
PATENT DATED [illegible]
PATENT DATED [illegible]
ABANDONED
PATENT DATED [illegible]
ABANDONED
PATENT DATED [illegible]
PATENT DATED [illegible]
PATENT DATED [illegible]
ABANDONED
PATENT DATED [illegible]
PATENT DATED [illegible]
PATENT DATED [illegible]
PATENT DATED [illegible]
PATENT DATED [illegible]

1423 DUPLICATE

1935 RETURN

OF

CAPITAL STOCK TAX

For year ending June 30, 1935

DOMESTIC CORPORATIONS

This return must be filed in duplicate with the Collector of Internal Revenue for your district on or before June 15, 1935, and the tax must be paid on or before that date.

Name: TERRYDRAFT ENGINEERING CORPORATION

Address: 4499 SANTA FE AVE., LOS ANGELES, CALIFORNIA

Name of parent corporation:

Name of affiliated:

Nature of business or trade: ENGINEERING

Incorporated or organized in: CALIFORNIA 1934

Was a capital stock tax return filed for the year ending June 30, 1934? YES

State the name:

Date of close of last income tax taxable year: DECEMBER 31, 1934

Corporations making a consolidated return should use the name of the parent corporation.

1 ORIGINAL DECLARED VALUE OF ENTIRE CAPITAL STOCK [illegible]

Corporations which have never filed a return should use the original declared value.

2 ADJUSTED DECLARED VALUE OF ENTIRE CAPITAL STOCK [illegible]

Corporations which have filed a return should use the adjusted declared value.

Corporations which have filed a return should use the adjusted declared value.

2 [illegible]

3 [illegible]

4 [illegible]

5 [illegible]

6 [illegible]

[illegible]

[illegible] STATE [illegible]

[illegible]

[illegible]

- 2 -

The schedules on this page will be filled in only by a corporation making adjustments to an original declared value for the capital stock established by the return for the year ended June 30, 1964. See instructions 5 to 10, inclusive.

SCHEDULE 1. ADJUSTMENT OF ORIGINAL DECLARED VALUE OF ENTIRE CAPITAL STOCK FOR ALL TRANSACTIONS DURING THE INCOME-TAX TAXABLE YEAR ENDED [illegible] 19[illegible]

Original declared value as established by the first return for the taxable year ended June 30, 1964	1,250,000.00
Additions:	
1. Total cash and fair market value of property paid in for stock or shares	
2. Paid-in surplus and contributions to capital	
3. Net income	15,736.99
4. Income of corporation wholly exempt from tax over the amount disallowed as deductions by section 24, [illegible] of the Revenue Act of 1964	
5. The amount of the dividend deduction allowable for income tax purposes	
Total additions	15,736.99
Total original capital plus additions	1,265,736.99
Deductions:	
1. Total cash and fair market value of property distributed in liquidation to shareholders	
2. Distributions of earnings or profits	
3. The excess of [illegible] over gross income	
Total deductions	
[illegible]	1,265,736.99

SCHEDULE 2. ANALYSIS OF CHANGES IN CAPITAL STOCK AND SURPLUS

Capital stock and surplus at beginning of year		Deductions: (Other transactions)	
[illegible]	25,000.00	1. Dividends or distributions from A. [illegible]	
		2. [illegible]	
		3. [illegible]	
		4. [illegible]	
		5. [illegible]	
		Deductions: Between transactions	
		[illegible]	
		[illegible]	
		[illegible]	
		[illegible]	
		AFTER ACCUMULATION	10,000.00
[illegible]	15,736.99	INCOME TAXES	2,353.35
Capital stock and surplus at end of year			
			27,000.00
			2,353.35
			40,736.99

(Testimony of D. S. Jeppson.)

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 24, income tax return of Technicraft Engineering Corporation for the calendar year 1936.

FIELD

Form 1120

(Internal Revenue Service)

(Collector's Stamp)

RETURN FORM MARKED "DUPLICATE" MUST BE FILED WITH THIS ORIGINAL RETURN

1423

Page 1 of Return

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN

For Calendar Year 1936

or Fiscal Year begun , 1936, and ended , 1937

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

HERBLCRAFT ENGINEERING CORP.

5618 SOUTH SOTO STREET

HUNTINGTON PARK, LOS ANGELES, CALIFORNIA

File No. 404171

District

(District Code)

Case Closed Date Check of Bank

Final Payment

It is Essential, Except Where Otherwise Provided in the Instructions, That This Form be Completely Filled in. Irregularities of Any Statements, Schedules, or Reports Submitted Therewith

EXCESS-PROFITS TAX COMPUTATION

Item No.		
1	Value of capital stock as disclosed in your capital-stock tax return for year ended June 30, 1936 (or your capital-stock tax return for year ended June 30, 1937, if your taxable tax fiscal year begins in 1936 and ended on or after July 31, 1937)	$ 1 750 000 00
2	Net income for excess-profits tax computation (Item 27, page 2)	111 860 51
3	Less: Dividends received credit, 85 percent of Item 13 (a), page 2	
4	Balance of net income	111 860 51
5	Less: 10 percent of Item 1	175 000 00
6	Net income subject to excess-profits tax (carry forward to Item 7)	None

Item No.		
7	Net income subject to excess-profits tax (amount of Item 6)	None
8	Amount taxable at 8 percent (Item 7 or 8 percent of Item 1, whichever is less)	
9	Amount taxable at 12 percent (Item 7 minus Item 8)	
10	Excess-profits tax at 8 percent (8 percent of Item 8)	
11	Excess-profits tax at 12 percent (12 percent of Item 9)	
12	Total excess-profits tax (total of Items 10 and 11)	None

NOTE. Where an affiliated group of corporations makes a consolidated income tax return, the common parent corporation and each subsidiary which is liable for the making of an excess-profits tax return must make a separate excess-profits tax return on this form. (See Instructions 20.)

INCOME TAX COMPUTATION

27 Net income for income tax computation (Item 26, page 2)		111 860 51
28 Less: Interest on obligations of United States, etc. (Item 8, page 2)		
29 Dividends received credit, 85 percent of Item 12 (a), page 2 (the credit not to exceed 85 percent of Item 27)		
30 Dividends paid credit (the credit allowed only to mutual investment companies)		
31 Normal tax net income (Item 27 minus Items 28 and 29 or 28 and 30)		111 860 51
32 Tax on portion of Item 31 not in excess of $2,000.00	2 000 00	160 00
33 Tax on portion of Item 31 in excess of $2,000.00 but not in excess of $15,000.00	13 000 00	1 430 00
34 Tax on portion of Item 31 in excess of $15,000.00 but not in excess of $40,000.00	25 000 00	5 250 00
35 Tax on portion of Item 31 in excess of $40,000.00	71 860 51	18 719 00
36 Total normal tax		15 559 00
37 Surtax net income (Item 31 minus $40,000.00)		111 860 51
38 Surtax	15 559 00	
39 Total income tax (Item 36 plus Item 38)		15 559 00
40 Less: Income tax withheld at source		55 501 83
41 Balance of tax payable	40 000 00	

NOV 20 1937

INCOME TAX COMPUTATION

NORMAL TAX

1 Net income for income tax computation (item 20, page 2)		111 460 51
4 Less: Interest on obligations of United States, etc. (item 8, page 2)		
5 Dividends received credit: 85 percent of item 12 (c), page 2, but not in excess of 85 percent of item 1		
6 Dividends paid credit (but credit allowed only to mutual investment companies)		
7 Remainder net income (item 1 minus items 4 and 5 or 4 and 6)		111 460 51
[illegible]	2 000 00	160 00
[illegible]	13 000 00	1 430 00
[illegible]	25 000 00	3 250 00
[illegible]	71 460 51	10 719 06
		15 559 06
		111 460 51
	15 559 06	
		15 559 06
		95 901 45
	45 000 00	
		45 000 00
		50 901 45
		50 901 45
	9 590 14	673 31
	9 590 14	1 150 82
	19 180 29	3 260 05
	17 540 86	3 858 59
		8 943 77
		8 943 77
		24 500 85
		24 500 85

Page 2 of Return

Date of incorporation 1936 Under the laws of what State or country California

The corporation's books are in care of R. A. Peters Located at 5850 South Santa Street, L. A.

Kind of business (in detail) Research & Engineering (Also check industrial division on page 4) Is this a consolidated return of railroad corporations? No If so, of how many corporations?

If this is not a consolidated income tax return of railroad corporations, did the corporation at any time during its taxable year own 50 percent or more of the voting stock of another corporation or corporations? No (Answer "yes" or "no") If so, attach separate schedule showing with respect to each corporation (1) name and address of corporation, (2) percentage of stock owned, (3) date stock was acquired, and (4) the collector's office in which the corporation's income tax return for the taxable year was filed.

Is the corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1936? No (Answer "yes" or "no") (If so, an additional return on Form 1120H must be filed.)

Did the corporation make a return of information on Forms 1096 and 1099 (see Instruction 44) for the calendar year 1936? Yes (Answer "yes" or "no")

NET INCOME COMPUTATION

Item and Instruction No.

GROSS INCOME

1. Gross Sales (where inventories are an income-determining factor) $ Less Returns and Allowances $ Net Sales $
2. Less Cost of Goods Sold:
   (a) Inventory at beginning of year $
   (b) Material or merchandise bought for manufacture or sale
   (c) Other costs per books from Schedule A, Column [illegible] (1) Salaries and wages $ (2) Other costs $ Total
   (d) Total of lines (a), (b) and (c) $
   (e) Less inventory at end of year
3. Gross Profit from Sales [illegible] $
4. Gross Receipts [illegible] determining factor $
5. Less cost of [illegible] Total
6. Gross Profit [illegible]

822 01

2 580 00

145 115 73

Discounts 52 08 148 527 82

DEDUCTIONS

$ 10 080 00

2 484 08

5 723 76

46 00

GROSS INCOME

1 Gross Sales (where inventories are an income-determining factor) $	Less Returns and Allowances $	Net Sales $	
2 Less Cost of Goods Sold			
(a) Inventory at beginning of year	$		
(b) Materials and merchandise bought for manufacture or sale			
(c) Miscellaneous items from Schedule A (attached)			
(d) Total			
(e) Less inventory at end of year	$		
3 Gross Profit on Sales		$	
4 Gross income from business other than sales		$	
5 Total gross income			
6 Gross income			
		822 01	
		2 580 00	
		145 115 73	
Dividends		52 08	148 527 82
		13 060 08	
		2 884 08	
		5 723 76	
		46 00	
		656 08	
		4 888 51	
		1 587 50	
		11 695 82	
			37 067 31
			111 460 51
			111 460 51

SCHEDULE A

Salaries and wages			
Other costs			

SCHEDULE B CAPITAL GAINS AND LOSSES FROM SALES OR EXCHANGE OF UNITS

SCHEDULE C COMPENSATION OF OFFICERS

W. T. WELLS	PRESIDENT	PART	12,500	5,000.00
W. L. LAKE	VICE-PRES.	PART	12,500	5,000.00
				10,000.00

SCHEDULE D [illegible]

[illegible]	PRESIDENT	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
				[illegible]

[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

[illegible]	STATE TREASURER	[illegible]
[illegible]	[illegible] TREASURY	[illegible]
[illegible]	COUNTY	[illegible]
[illegible]	STATE	[illegible]
		[illegible]

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SCHEDULE I CONTRIBUTIONS OR GIFTS (See Instructions I)

Community Chest	46 00

SCHEDULE J EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM ETC

SCHEDULE K EXPLANATION OF DEDUCTION FOR DEPRECIATION

Furniture	1939	226 00	16 50	209 50	10 Yrs	9 Yrs		22 00
Furniture	1936	1 054 92	—	1 054 92	10 Yrs	10 Yrs		23 89
Machinery	1936	1 293 46	—	1 293 46	10 Yrs	10 Yrs		13 13
Buildings (Steel & Concrete)	1936	150 539 98	—	150 539 98	50 Yrs	50 Yrs		527 00
								632 02

No

No

YES

No

No

ANNUAL

Furniture	1956	226 00	16 50	283 50	10 Yrs	5 Yrs	22 00
Furniture	1956	1 654 92	—	1 654 92	10 Yrs	10 Yrs	23 85
Machinery	1956	1 293 46	—	1 293 46	10 Yrs	10 Yrs	19 19
Buildings (Steel & Concrete)	1956	150 539 98	—	150 539 98	50 Yrs	50 Yrs	627 00
							692 04

No

No

Yes

No

No

Annual

Yes

D. S. Jeppson, C. P. A. and Associates,
Los Angeles

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SCHEDULE L—BALANCE SHEETS (See Instructions 40)

	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
ASSETS				
1 Cash				
a Demand deposits (including checks)	$ 1 518 15	$	[illegible] 15	
b Time deposits (including certificates of deposit)				
c All other cash	50 00	1 568 15	50 00	[illegible] 73
2 Accounts receivable				23 867 50
3 Accounts [illegible]	22 589 00		25 000 26	
a Less reserve for bad debts		22 589 00		25 000 26
4 Inventories				
a Raw materials				
b Work in process				
c Finished goods				
d [illegible]				
5 Investments in and advances to affiliated companies				
6 Other investments				
7 Mortgage and real estate loans receivable				
8 Other current assets				
9 Other loans and advances				
10 Buildings and other depreciable assets				
a Less accumulated depreciation				
11 Depletable assets				
a Less accumulated depletion				
12 Land (not depreciable)				
13 Other assets				
14 Total assets				
LIABILITIES AND SHAREHOLDERS' EQUITY				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities			158 69	
18 Loans from shareholders	180 88	180 88	57 64	215 53
19 Mortgages, notes, bonds payable in 1 year or more			150 539 98	
20 Other liabilities			1 293 66	
21 Capital stock: a Preferred stock	220 00		1 278 92	
b Common stock				
22 Paid-in or capital surplus				
23 Retained earnings—Appropriated	220 00		153 168 36	
24 Retained earnings—Unappropriated	16 50	481 50	788 58	152 379 82
25 Less cost of treasury stock				
26 Total liabilities and shareholders' equity		10 566 77		27 047 76
27 Less amortization		57 643 68		66 518 75
28 Net income per books	8 791 37		56 569 81	
29 Federal income tax	2 [illegible] 00		70 655 69	
30 Net income after Federal income tax	2 000 00	9 043 37		83 021 10

			158 89	
	100 84	100 84	57 [illegible]	215 51
			150 539 98	
			1 293 46	
	220 00		1 278 94	
	220 00		153 108 36	
	16 50	285 50	788 58	152 399 82
LESS AMORTIZATION		10 366 77		27 047 76
		57 843 68		46 518 75
EXPERIMENTAL DEVELOPMENTS	8 781 37		52 365 81	
	2 280 00		70 655 69	
	2 000 00	9 043 37		83 001 10
		81 511 35		316 806 89
LIABILITIES				
				185 000 00
				35 087 88
			1 160 00	
			915 16	
	2 250 68	2 250 68		2 077 16
RESERVES		48 600 00		75 000 00
	25 000 00	25 000 00	25 000 00	25 000 00
	5 660 71	5 660 71	[illegible]	[illegible] 85
		81 511 35		316 806 89

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SCHEDULE M—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

[illegible]	111 860 51
[illegible]	111 860 51
[illegible]	
[illegible]	
[illegible]	
RESERVE FOR 1935 TAXES	8 600 00
Added	
[illegible]	120 060 51
[illegible]	51 838 37
[illegible]	68 622 14
[illegible]	5 060 71
[illegible]	79 282 85
[illegible]	40 000 00
[illegible]	39 282 85

[illegible]	7 308 86
[illegible]	
PATENT LITIGATION	35 000 00
[illegible]	
PATENT AMORTIZATION	5 075 71
[illegible]	53 838 37
10/31/36 [illegible] BOTH	40 000 00
[illegible]	40 000 00

		PATENT LITIGATION	35 000 00
		PATENT AMORTIZATION	9 095 71
RESERVE FOR 1935 TAXES	1 600 00		
	120 068 51		53 838 37
	51 838 37	10/31/36 BATES	40 000 00
	68 622 14		
	5 660 71		
	74 282 85		
	40 000 00		
	34 282 85		40 000 00

DUPLICATE

1936 RETURN

OF

CAPITAL STOCK TAX

For Year Ending June 30, 1936

DOMESTIC CORPORATIONS

This return must be filed in triplicate with the Collector of Internal Revenue for your district on or before July 31, 1936, and the tax must be paid on or before that date.

Name TECHNICRAFT ENGINEERING CORP.

1\. Address 5499 SANTA FE AVENUE, LOS ANGELES, CALIFORNIA

5\. Nature of business Engineering and Development

6\. CALIFORNIA

Yes

Los Angeles

8\. DECLARED VALUE OF ENTIRE CAPITAL STOCK $ 1,750,000.00

9\. EXEMPTIONS.

10. Declared value	1 750 000 00
11. Tax at rate of $1.00	1 750 00
12. Penalty for delinquency in filing return	
13. Interest at 6 percent per annum	
14. Total tax, penalty, and interest	1 750 .00

15\. State amounts of outstanding capital stock and surplus

Capital stock: Preferred			
Common	25,000	1.00	25,000.00
Capital or paid-in surplus			
Surplus reserves			
Surplus and undivided profits			

We, the undersigned H. S. Lapp Vice President

and D. G. Peters Secretary

of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including any accompanying statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1926 and the Regulations issued thereunder.

Sworn to and subscribed before me this 30 day of July 1936

Notary Public

CORPORATE SEAL

Vice President

Secretary

C

(Testimony of D. S. Jeppson.)

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 25, income tax return of Technicraft Enginering Corporation, for the calendar year 1937.

FINAL RETURN

RETURN FORM MARKED "DUPLICATE" MUST BE FILED WITH THIS ORIGINAL RETURN

CORPORATION INCOME AND EXCESS-PROFITS X RETURN

For Calendar Year [redacted]

or fiscal year begun JANUARY 1, 1947 and ended AUGUST 31, 1947

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

TECHNICRAFT ENGINEERING CORP.

5610 SOUTH SOTO STREET

HUNTINGTON PARK LOS ANGELES CALIFORNIA

Page 1 of Return

Serial Number

District

(Auditor's Report)

It is Essential, Except Where Otherwise Provided in the Instructions, That This Form be Completely Filled in Irrespective of Any Statements, Schedules, or Reports Submitted Herewith

EXCESS-PROFITS TAX COMPUTATION

	Net income subject to excess-profits tax (amount of item 6)	62 713 81
1 821 460 51	8. Amount taxable at 8 percent (item 7 or 8 percent of item 1, whichever is less)	
119 432 28	9. Amount taxable at 12 percent (item 7 minus item 8)	
119 432 28	10. Excess-profits tax at 8 percent (8 percent of item 8)	
182 146 95	11. Excess-profits tax at 12 percent (12 percent of item 9)	
62 713 81	12. Total excess-profits tax (sum of items 10 and 11)	No TAX

INCOME TAX COMPUTATION

4299.

		119 432 28
		119 432 28
2 000 00	160 00	
15 000 00	1 430 00	
25 000 00	3 250 00	
79 432 28	11 914 84	
		16 754 84

	119 432 28
16 754 84	
—	
—	
—	16 754 84
	102 677 44
44 000 00	
—	44 000 00
	62 677 44

119 432 28		
119 432 28		
182 146 05		
62 713 81		86 TAX

INCOME TAX COMPUTATION

4299

	119 432 28	
	119 432 28	
2 000 00	160 00	
13 000 00	1 430 00	
25 000 00	3 250 00	
79 432 28	11 914 84	
		16 754 84

	119 432 28	
16 754 84		
—		
—		
—	16 754 84	
	102 677 40	
40 000 00		
—	40 000 00	
	62 677 40	
	62 677 40	
10 [illegible] 74	718 74	
10 [illegible] 74	1 232 13	
[illegible]	3 491 03	
[illegible]	4 517 81	
1 [illegible] 76	289 16	
	10 248 87	
	—	
		10 248 87
		(27 003 71)
		27 003 71

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Page 1 of Return

Date of incorporation 1934 Under the laws of the State of country CALIFORNIA

The [illegible] of B. H. PETERS [illegible] 5610 SOUTH SOTO STREET, LOS ANGELES

Kind of business [illegible] RESEARCH AND ENGINEERING [illegible] NO [illegible]

of the main corporation?

[illegible] NO [illegible]

[illegible] NO [illegible]

[illegible] NO

[illegible] YES

NET INCOME COMPUTATION

SET INCOME COMPUTATION

Page 3 of Return

SCHEDULE A

SCHEDULE I CONTRIBUTIONS OR GIFTS

SCHEDULE J EXPLANATION OF DEDUCTIONS FOR LOSSES BY FIRE OR STORM

SCHEDULE K

Page 8 of Return

SCHEDULE L—BALANCE SHEETS (See Instructions)

Item	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
ASSETS				
1 Cash				
a Demand deposits (including checks)	$ 602 19		$ 18 817 25	
b Time deposits (including certificates of deposit)				
c All other cash	50 00	652 19		18 817 25
2 Notes receivable		23 467 50		8 500 00
3 Accounts receivable	$ 25 084 26		$ 60 069 17	
a Less reserve for bad debts	—	23 084 26	—	60 069 17
4 Inventories				
a Raw materials	$		$	
b Work in process				
c Finished goods				
d Supplies				
5 Investments in and advances to affiliated companies				
a Bonds of affiliated companies				
b Stocks of affiliated companies				
c Other investments				
6 Other investments				
7 Other current assets				
8 Deferred charges				
9 Other assets				
10 Land				
11 Buildings				
12 Less accumulated depreciation				
13 Machinery and equipment				
14 Less accumulated depreciation				
15 Furniture and fixtures				
16 Less accumulated depreciation				
17 Other fixed assets				
18 Less accumulated depreciation				
19 Patents				
20 Other intangibles				
21 Total assets				
22 Less amortization				
23 Other				
24 Experimental developments				
25 Organization				
26 Total				

Less Amortization

Experimental Development

Oil Properties

SCHEDULE RECONCILIATION OF NET INCOME AND ANALYSIS OF ACCOUNT IN SURPLUS

[illegible]	119 832 28
[illegible]	119 832 28
[illegible]	33 831 87
[illegible]	85 600 57
[illegible]	34 282 85
[illegible]	278 47
[illegible]	126 161 69
[illegible]	64 500 85
[illegible]	55 660 84

[illegible]	27 095 71
PATENT AMORTIZATION	6 828 16
[illegible]	33 831 87
[illegible] NOTES	80 000 00
1936 FEDERAL INCOME TAX	28 500 85
[illegible]	64 500 85

LIABILITY FOR FILING RETURNS

Corporations generally. [illegible]

Domestic corporations within the possession of the United States. [illegible]

Foreign corporations. [illegible]

[illegible]

SIGNATURES AND VERIFICATION

[illegible]

PAYMENT OF TAX

[illegible]

[illegible]	119 832 29
[illegible]	33 831 87
[illegible]	85 600 37
[illegible]	34 282 85
Refund 1935 Income Tax	278 47
[illegible]	120 161 69
[illegible]	64 [illegible] 85
[illegible]	55 [illegible] 84

Total of Line		33 831 87
Dividends paid during the taxable year		
(a) Date paid	Notes	40 000 00
(b) Date paid		
(c) Date paid		
(d) Date paid		
Other debits to surplus		
1936 Federal Income Tax		24 500 85
[illegible]		64 500 85

LIABILITY FOR FILING RETURNS

Corporations generally. Every domestic corporation, joint-stock company, association, or insurance company other than a life insurance company, not specifically exempt under Section 101 of the Revenue Act of 1936, whether or not having any taxable income, must make a return. [illegible]

Domestic corporations within the possessions of the United States. [illegible]

Foreign corporations. [illegible]

Insurance companies. [illegible]

Mutual insurance companies other than life insurance companies. [illegible]

TIME AND PLACE FOR FILING

[illegible]

located. In the case of a foreign corporation having no office or place of business in the United States the return shall be filed on or before the 15th day of the sixth month following the close of the taxable year. Where a consolidated income tax return is filed by an affiliated group [illegible] the separate excess-profits tax returns of [illegible] each subsidiary corporation must be filed [illegible] consolidated income tax return is filed.

The commissioner of internal revenue may grant a reasonable extension of time for filing a return [illegible]

SIGNATURES AND VERIFICATION

[illegible]

PAYMENT OF TAX

[illegible]

AFFIDAVIT

[illegible]

NOTARY PUBLIC

AFFIDAVIT

[illegible]

NOTARY PUBLIC

Fagan

FAGAN, C.P.A., AND ASSOCIATES

609 SOUTH SPRING ST., LOS ANGELES

5-6

[illegible]

[illegible]

[illegible]

(Testimony of D. S. Jeppson.)

SUMMARY COMBINED BALANCE SHEETS

"Lane-Wells" Companies, Technicraft Engineering Corp., and Alexander Anderson, Inc.

August 31, 1937

	The Lane-Wells Co.	The Lane-Wells Co. of Texas	The Lane-Wells Co. of Oklahoma	Technicraft Engineering Corp.	Lane-Wells International	Alexander Anderson, Inc.	Combined
ASSETS							
Current Assets:							
Cash on Hand and in Banks	9,017.57	21,131.65	4,116.92	18,817.25	3,165.61	462.19	56,711.19
Accounts, Notes and Contracts Receivable—Net	39,798.38	157,547.92	40,704.32	11,492.74	10,492.83	31,753.98	291,790.17
Inventories	117,294.41	—	—	—	—	—	117,294.41
Total Current Assets	166,110.36	178,679.57	44,821.24	30,309.99	13,658.44	32,216.17	465,795.77
Deferred Charges:							
Field Service Materials and Supplies	26,320.25	68,581.20	18,632.53	—	37,476.43	—	151,010.41
Small Tools	4,658.23	41,858.65	8,323.06	179.45	12,093.01	—	67,112.40
Prepaid Insurance	2,587.54	3,307.40	1,953.06	533.67	487.71	786.30	9,655.68
Prepaid Rent	—	45.16	—	—	788.11	—	833.27
Patterns, Moulds, and Dies	1,109.68	—	—	—	166.68	—	1,276.36
Leasehold Improvements	178.08	2,339.30	1,164.04	—	—	—	3,681.42

(Testimony of D. S. Jeppson.)

Summary Combined Balance Sheets—(Continued.)

"Lane-Wells" Companies, Technicraft Engineering Corp., and Alexander Anderson, Inc.

August 31, 1937

	The Lane-Wells Co.	The Lane-Wells Co of Texas.	The Lane-Wells Co. of Oklahoma	Technicraft Engineering Corp.	Lane-Wells International	Alexander Anderson, Inc.	Combined
Assets—(Continued.)							
Prepaid Miscellaneous	306.14	2,422.55	—	—	—	—	2,728.69
Prepaid Taxes	1,386.55	2,614.99	298.06	—	—	37.41	4,337.01
Total Deferred Charges	36,546.47	121,169.25	30,370.75	713.12	51,011.94	823.71	240,635.24
Fixed Assets (Less Depreciation):							
Land	—	18,377.56	—	27,047.76	—	10,500.00	55,925.32
Buildings (complete and under construction) Net	—	33,385.35	—	156,116.59	—	8,858.90	198,360.84
Shop Machinery and Equipment—Net	42,111.15	741.23	30.60	1,378.25	—	9,431.20	53,692.43
Field Service Trucks and Equipment—Net	8,619.88	118,532.79	15,077.72	—	17,878.58	22,890.79	182,999.76
Other Autos and Trucks—Net	4,671.69	2,193.60	2,890.22	—	1,138.70	10,940.09	21,834.30
Furniture and Fixtures—Net	8,387.35	3,691.82	1,591.91	1,162.12	—	48.25	14,881.45
Total Fixed Assets	63,790.07	176,922.35	19,590.45	185,704.72	19,017.28	62,669.23	527,694.10

(Testimony of D. S. Jeppson.)

Summary Combined Balance Sheets—(Continued.)

"Lane-Wells" Companies, Technicraft Engineering Corp., and Alexander Anderson, Inc.

August 31, 1937

	The Lane-Wells Co.	The Lane-Wells Co. of Texas	The Lane-Wells Co. of Oklahoma	Technicraft Engineering Corp.	Lane-Wells International	Alexander Anderson, Inc.	Combined
Assets—(Continued.)							
Other Assets (Less Amortization):							
Patents and Patents Pending—Net	—	—	—	44,034.79	—	51,145.63	95,180.42
Oil Rights	—	—	—	11,655.69	—	—	11,655.69
Development Work	—	—	—	24,413.83	—	—	24,413.85
Consignments in—Contra	—	—	—	—	—	21,038.50	21,038.50
Franchise Rights	11,603.55	—	—	—	—	—	11,603.55
Total Other Assets	11,603.55	—	—	80,104.33	—	72,184.13	163,892.01
Inter-Company Balances	241,136.08	50.00	9,438.71	37,076.43	—	16.08	—
Total Assets	519,186.53	476,821.17	104,221.15	333,908.59	83,687.66	167,909.32	1,398,017.12
LIABILITIES AND NET WORTH							
Current Liabilities:							
Accounts Payable	81,984.77	3,731.56	2,189.09	4,255.12	541.14	9,630.31	102,331.99
Notes Payable	95,000.00	25,000.00	—	50,000.00	—	50,000.00	220,000.00
Due to Officers and Stockholders	36,015.20	—	—	—	—	—	36,015.20
Payroll Payable	367.41	.10	—	305.92	4,851.70	—	5,525.13

(Testimony of D. S. Jeppson.)

Summary Combined Balance Sheets—(Continued.)

"Lane-Wells" Companies, Technicraft Engineering Corp., and Alexander Anderson, Inc.

August 31, 1937

	The Lane-Wells Co.	The Lane-Wells Co. of Texas	The Lane-Wells Co. of Oklahoma	Technicraft Engineering Corp.	Lane-Wells International	Alexander Anderson, Inc.	Combined
Liabilities and Net Worth—(Continued.)							
Royalties Payable	359.55	29.25	—	1,754.52	—	825.00	2,968.32
Taxes Payable	37,673.53	90,743.93	30,203.72	41,408.02	901.52	4,646.82	205,577.54
Interest Payable	974.97	—	—	524.17	—	2,500.00	3,999.14
Accrued Insurance Payable	1,795.27	2,808.62	351.56	—	302.74	245.83	5,504.02
Total Current Liabilities	254,170.70	122,313.46	32,744.37	98,247.75	6,597.10	67,847.96	581,921.34
Other Liabilities:							
Long Term Notes Payable	—	—	—	—	—	50,000.00	50,000.00
Consignments in—Contra	—	—	—	—	—	21,038.50	21,038.50
Total Other Liabilities	—	—	—	—	—	71,038.50	71,038.50

(Testimony of D. S. Jeppson.)

Summary Combined Balance Sheets—(Continued.)

"Lane-Wells" Companies, Technicraft Engineering Corp., and Alexander Anderson, Inc.

August 31, 1937

	The Lane-Wells Co.	The Lane-Wells Co. of Texas	The Lane-Wells Co. of Oklahoma	Technicraft Engineering Corp.	Lane-Wells International	Alexander Anderson, Inc.	Combined
Liabilities and Net Worth—(Continued.)							
Net Worth:							
Capital Stock Issued	25,000.00	25,000.00	10,003.00	25,000.00	25,000.00	7,500.00	117,503.00
Operating Surplus After Income Taxes	226,135.23	202,369.13	55,540.46	130,660.84	4,155.04	8,693.58	627,554.28
Total Net Worth	251,135.23	227,369.13	65,543.46	155,660.84	29,155.04	16,193.58	745,057.28
Inter-Company Balances	13,880.60	127,138.58	5,933.32	80,000.00	47,935.52	12,829.28	—
Total Liabilities and Net Worth	519,186.53	476,821.17	104,221.15	333,908.59	83,687.66	167,909.32	1,398,017.12

(Testimony of D. S. Jeppson.)

TECHNICRAFT ENGINEERING CORP.

5610 South Soto Street, Los Angeles, Calif.

1937

1. Date and Manner of Dissolution:

   Date of Dissolution—October 27, 1937 by consent of stockholders. Notice and certificates filed in accordance with Section 400, Civil Code of California. Assets transferred as of September 1, 1937.

2. Name and address of each shareholder at dissolution and the number and par value of shares of stock held by each of them:

   Shareholder—Lane-Wells Company of Delaware
   Address—5610 South Soto Street, Los Angeles, California
   Number of shares held: 25,000
   Par Value: $1.00

3. A description and value of liquidating assets received by each shareholder:

   See Attached Balance Sheet.

4. Name and address of each individual or corporation other than shareholders and creditors, if any, that received assets at dissolution:

   None.

5. Description and value of assets received by each such individual or corporation:

   None.

6. Consideration, if any, paid by each of them for assets received:

   None.

(Testimony of D. S. Jeppson.)

BALANCE SHEET

TECHNICRAFT ENGINEERING CORP.

August 31, 1937

ASSETS

urrent Assets:			
Cash on Hand and in Bank		18,817.25	
Accounts Receivable—Regular		120.00	
Accounts Receivable — Affiliated Companies		2,554.30	
Notes Receivable		8,500.00	
Royalties Receivable — Affiliated Companies		34,522.13	
Advanced to Employees		1,436.38	
Advanced to Officers		1,436.36	
Total Current Assets			67,386.42
eferred Charges:			
Prepaid Insurance		533.67	
Small Tools		179.45	
Total Deferred Charges			713.12
ixed Assets:			
Land		27,047.76	
Buildings	158,795.45		
Less Reserve for Depreciation	2,678.86	156,116.59	
Machinery and Equipment	1,488.58		
Less Reserve for Depreciation	110.33	1,378.25	
Furniture and Fixtures	1,311.74		
Less Reserve for Depreciation	149.62	1,162.12	
Total Fixed Assets			185,704.72

(Testimony of D. S. Jeppson.)

Balance Sheet—(Continued.)

Assets—(Continued.)

Other Assets:			
Patents and Patents Pending	77,558.01		
Less Reserve for Amortization	33,523.22	44,034.79	
Experimental Developments		24,413.85	
Oil Rights		11,655.69	
Total Other Assets			80,104
Total Assets			333,90

LIABILITIES AND NET WORTH

Current Liabilities:			
Accounts Payable—Regular		4,255.12	
Royalties Payable		1,754.52	
Payroll Payable		305.92	
Notes Payable to Bank		50,000.00	
Notes Payable to Affiliated Companies		80,000.00	
Interest Payable		524.17	
Taxes Payable		41,408.02	
Total Current Liabilities			178,247
Net Worth:			
Capital Stock Issued		25,000.00	
Appropriated Surplus	75,000.00		
Unappropriated Surplus	55,660.84	130,660.84	
Total Net Worth			155,66
Total Liabilities and Net Worth			333,90

(Testimony of D. S. Jeppson.)

TECHNICRAFT ENGINEERING CORP.
5610 South Soto Street, Los Angeles, California

Year 1937 to August 31st

DEPRECIATION SCHEDULE

Year Acquired	Cost and Additions	Prior Deductions	Adjusted Cost January 1, 1937	Prior Depreciation	Reserve 1937	Balance Remaining	Estimated Life	Sales, Etc. 1937	Adjusted Cost 8/31/37	Depreciation 1937	Reserve 8/31/37
Various Furniture & Fixtures	1,311.74	—	1,311.74	62.35	62.35	1,249.39	Various	—	1,311.74	87.27	149.62
Various Machinery & Equipment ..	1,529.17	25.78	1,503.39	19.19	19.19	1,484.20	Various	14,81	1,488.58	91.14	110.33
Various Buildings	167,075.63	7,963.75	159,111.88	627.00	627.00	158,484.88	Various	316.43	158,795.45	2,051.86	2,678.86
Totals.....	169,916.54	7,989.53	161,927.01	708.54	708.54	161,218.47		331.24	161,595.77	2,230.27	2,938.81

(Testimony of D. S. Jeppson.)

TECHNICRAFT ENGINEERING CORP.

5610 South Soto Street, Los Angeles, California

PATENTS August 31, 1937

Numbers	Dates of Issue	Cost 12/31/36	Additions 1937	Total Cost	Reserve 12/31/36	Reserve for 1937	Total Reserve	
P 2029490	2-4-36	1,104.85	—	1,104.85	59.58	64.99	124.57	
S 648037	12-20-32	1,308.87	—	1,308.87	—	—	—	
S 622901	3-27-33	1,339.08	—	1,339.08	—	—	—	
S 694603	10-21-33	1,323.80	54.93	1,378.73	—	—	—	
S 694604	10-21-33	148.65	—	148.65	148.65	—	148.65	Abandoned in 1935
S 694564	10-21-33	1,205.88	—	1,205.88	—	—	—	
S 642370	11-12-32	147.90	—	147.90	147.90	—	147.90	Abandoned in 1935
P 1859744	5-24-32	3,525.75	—	3,525.75	829.60	207.40	1,037.00	
P 1734470	11-5-29	468.85	—	468.85	193.06	27.58	220.64	
P 2061865	11-24-36	962.59	—	962.59	4.72	56.62	61.34	
S 614730	6-1-32	142.98	—	142.98	142.98	—	142.98	
P 1925016	8-29-33	2,648.05	—	2,648.05	195.52	175.18	370.70	
P 1925015	8-29-30	172.95	—	172.95	30.51	10.17	40.68	
P 1926017		202.95	—	202.95	35.82	11.94	47.76	
P 1987919	1-15-35	203.45	—	203.45	23.94	11.97	35.91	
S 631782	9-6-32	151.95	—	151.95	151.95	—	151.95	Abandoned in 1935
P 2061835	11-24-36	1,091.74	555.75	1,647.49	5.35	96.71	102.06	
P 2069974	12-11-36	1,669.29	—	1,669.29	12.27	98.19	110.46	

(Testimony of D. S. Jeppson.)

Technicraft Engineering Corp., 5610 South Soto Street, Los Angeles, California

Patents August 31, 1937—(Continued.)

Numbers	Dates of Issue	Cost 12/31/36	Additions 1937	Total Cost	Reserve 12/31/36	Reserve for 1937	Total Reserve	
P 2033560	3-10-36	1,223.93	—	1,223.93	57.00	71.99	128.99	
P 1925017	8-29-33	177.95	—	177.95	31.41	10.47	41.88	
S 646313	12-10-32	153.90	—	153.90	153.90	—	153.90	Abandoned in 1935
P 1944481	1-23-34	177.93	—	177.93	20.94	10.47	31.41	
P 1582184	4-27-26	12,917.18	13.20	12,930.38	1,727.02	761.85	2,498.87	
P 1822203	9-8-31	100.00	—	100.00	35.28	5.88	41.16	
P 2043340	6-9-36	991.54	—	991.54	37.05	58.33	95.38	
P 2033561	3-10-36	1,072.18	—	1,072.18	49.88	63.07	112.95	
P 2043401	6-9-36	1,234.01	—	1,234.01	39.30	72.59	111.89	
P 2029454	2-4-36	1,110.35	—	1,110.35	59.84	65.31	125.15	
P 2061864	11-24-36	966.10	—	966.10	4.74	56.83	61.57	
P 2037955	4-21-36	960.33	—	960.33	39.95	56.49	96.44	
P 2018163	10-22-35	969.15	—	969.15	57.01	57.01	114.02	
P 2033562	3-10-36	960.33	—	960.33	44.66	56.49	101.15	
P 2043341	6-9-86	960.34	—	960.34	30.61	56.49	87.10	
P 2029491	2-4-36	969.15	—	969.15	52.25	57.01	109.26	
P 2033563	3-10-36	960.33	—	960.33	44.66	56.49	101.15	
S 742646	9-4-34	859.90	—	859.90	—	—	—	
S 742647	9-4-34	859.90	—	859.90	859.90	—	859.90	Abandoned—Prior

(Testimony of D. S. Jeppson.)

Technicraft Engineering Corp., 5610 South Soto Street, Los Angeles, California

Patents August 31, 1937—(Continued.)

Numbers	Dates of Issue	Cost 12/31/36	Additions 1937	Total Cost	Reserve 12/31/36	Reserve for 1937	Total Reserve	
P 2029478	2-4-36	1,524.90	—	1,524.90	52.25	89.70	141.95	
P 2037896	4-21-36	962.58	—	962.58	37.76	56.62	94.38	
S 747714	10-10-34	859.90	—	859.90	—	—	—	
P 2037938	4-21-36	961.33	—	961.33	37.75	56.55	94.30	
Trademark		30.00	—	30.00	30.00	—	30.00	Abandoned in 1935
P 2033564	3-10-36	209.68	—	209.68	10.33	12.33	22.66	
S 17466	4-20-35	115.25	85.75	201.00	—	—	—	
S 19248	5-1-35	109.25	54.93	164.18	—	—	—	
S 19247	5-1-35	109.25	62.93	172.18	—	—	—	
P 2052786	9-11-36	661.69	—	661.69	11.34	38.92	50.26	
S 19835	5-4-35	724.49	85.75	810.24	—	—	—	
S 27024	6-17-35	180.46	54.93	235.39	—	—	—	
S 31391	7-15-35	109.25	85.75	195.00	—	—	—	
S 31392	7-15-35	109.25	85.75	195.00	—	—	—	
P 2062975	12-1-36	515.94	—	515.94	2.53	30.35	32.88	
S 31685	7-16-35	109.25	54.93	164.18	—	—	—	
S 38242	8-28-35	109.25	—	109.25	109.25	—	109.25	Abandoned—Prior
S 41456	9-20-35	109.25	881.85	991.10	—	—	—	
S 48823	11-8-35	194.72	—	194.72	—	—	—	

(Testimony of D. S. Jeppson.)

Technicraft Engineering Corp., 5640 South Soto Street, Los Angeles, California

Patents August 31, 1937—(Continued.)

Numbers	Dates of Issue	Cost 12/31/36	Additions 1937	Total Cost	Reserve 12/31/36	Reserve for 1937	Total Reserve
S 50650	11-20-35	182.69	92.43	275.12	—	—	—
S 563 08	12-27-35	332.33	—	332.33	—	—	—
Candle Invention		80.40	—	80.40	—	—	—
Thermit		122.70	—	122.70	—	—	—
P 1996530	2-2-35	195.44	—	195.44	11.50	11.50	23.00
P RE 16-577	1936	924.43	—	924.43	—	54.38	54.38
S 58864	1-13-36	128.43	—	128.43	—	—	—
S 64007	2-15-36	103.24	85.75	188.99	—	—	—
S 64006	2-15-36	103.25	85.75	103.25	—	—	—
P 2048451	7-12-36	726.76	13.20	739.96	21.37	43.53	64.90
S 21185	5-13-35	111.13	—	111.13	—	—	—
S 87965	6-29-36	100.44	—	100.44	—	—	—
S 85759	6-17-36	107.83	—	107.83	—	—	—
S 83425	6-4-36	100.44	—	100.44	—	—	—
P 2041209	5-19-36	73.44	—	73.44	2.78	4.32	7.10
S 119049	1-4-37	100.44	—	100.44	—	—	—
S 64484	2-18-36	322.94	—	322.94	—	—	—
S 101729	9-21-36	150.44	—	150.44	—	—	—
S 605916	4-18-32	73.53	—	73.53	—	—	—

(Testimony of D. S. Jeppson.)

Technicraft Engineering Corp., 5610 South Soto Street, Los Angeles, California

Patents August 31, 1937—(Continued.)

Numbers		Dates of Issue	Cost 12/31/36	Additions 1937	Total Cost	Reserve 12/31/36	Reserve for 1937	Total Reserve
P 1528805		3-10-25	3,852.93	64.93	3,917.86	642.15	230.66	872.81
P 1822412		9-8-31	521.44	—	521.44	43.45	30.67	74.12
S 124057		1937	—	85.75	85.75	—	—	—
S 132762		1937	—	86.26	86.26	—	—	—
S 132761		1937	—	86.26	86.26	—	—	—
S 137005		1937	—	85.75	85.75	—	—	—
S 139553		1937	—	86.44	86.44	—	—	—
Gun Device		1937	—	580.68	580.68	—	—	—
S 130888		1937	—	1,120.75	1,120.75	—	—	—
S 157180		1937	—	54.93	54.93	—	—	—
S 161627		1937	—	54.93	54.93	—	—	—
S 53362	Argentine	4-11-35	220.85	—	220.85	—	—	—
P 360244	Canada	9-1-36	90.32	—	90.32	5.02	5.02	10.04
S 72933	Holland	3-20-35	489.62	232.83	722.45	—	—	—
S 78663	Holland		19.02	—	19.02	—	—	—
P 21795	India	5-13-36	83.05	—	83.05	7.00	5.19	12.19
P 332795	Italy	12-9-35	164.85	70.51	235.36	10.99	16.32	27.31
P 182/400/195	Iraq	5-21-36	134.05	87.76	221.81	8.36	15.21	23.57
P 157	Persia	5-6-35	310.37	75.76	386.13	27.67	19.66	47.33
P 358908	Mexico	4-24-35	95.26	—	95.26	10.60	8.35	18.95

Technicraft Engineering Corp., 5610 South Soto Street, Los Angeles, California

Patents August 31, 1937—(Continued.)

Numbers		Dates of Issue	Cost 12/31/36	Additions 1937	Total Cost	Reserve 12/31/36	Reserve for 1937	Total Reserve	
P 23806	Roumania	5-28-35	182.34	175.26	357.60	14.46	24.32	38.78	
P 3/35	Trinidad	3-27-35	152.86	—	152.86	17.18	10.92	28.10	
P 1997	Turkey	7-18-35	251.59	130.00	381.59	28.37	26.37	54.74	
S 166889	USSR	4-5-35	333.34	—	333.34	338.34	—	333.34	Abandoned—Prior
P 1598	Venezuela	10-2-35	244.51	119.95	364.46	24.45	37.78	62.23	
S 48021	Poland	11-6-35	272.75	—	272.75	—	—	—	
S T45928	Germany	10-29-35	318.02	44.43	362.45	—	—	—	
S 46777 01/5A	Germany	4-16-36	139.27	—	139.27	—	—	—	
S 46778	Germany	1937	—	44.43	44.43	—	—	—	
	France		40.77	—	40.77	—	—	—	
P 8376	Chili	7-28-36	292.17	—	292.17	8.10	17.09	25.19	
S 1201	Peru	3-6-36	292.17	—	292.17	4.86	29.22	34.08	
S	Columbia	1937	—	204.76	204.76	—	—	—	
S 77606	Holland	4-30-36	256.95	—	256.95	—	—	—	
S 1944/36	Sweden	4-30-36	167.67	36.43	204.10	—	—	—	
S 429717	Canada	4-7-36	85.99	—	85.99	—	—	—	
S 46766	Germany	4-14-36	166.75	—	166.75	—	—	—	
S 399490	France	4-11-36	118.69	76.26	195.95	—	—	—	
P 415107	Belgium	1936	68.41	69.26	137.67	—	8.09	8.09	
S 2703–36	Czecho-Slav.	4-21-36	233.99	—	233.99	—	—	—	
P 34139	Italy	1936	139.75	68.01	207.76	—	13.85	13.85	
S P49681	Poland	4-23-36	248.99	—	248.99	—	—	—	

(Testimony of D. S. Jeppson.)

Technicraft Engineering Corp., 5610 South Soto Street, Los Angeles, California

Patents August 31, 1937—(Continued.)

Numbers		Dates of Issue	Cost 12/31/36	Additions 1937	Total Cost	Reserve 12/31/36	Reserve for 1937	Total Reserve	
S 192575	USSR	4-25-36	310.67	—	310.67	310.67	—	310.67	Abandoned—Prior
S 11776/36	Gr.Britain	4-24-36	122.99	—	122.99	—	—	—	
S 55884	Argentine	7-3-36	225.92	—	225.92	—	—	—	
S 431503	Canada	6-9-36	88.06	31.43	119.49	—	—	—	
S 48469	Germany	6-15-36	250.86	—	250.86	—	—	—	
S 178327	Holland	6-27-36	323.86	—	323.86	—	—	—	
S 23013	India	7-7-36	108.05	—	108.05	—	—	—	
P 233	Persia	1936	276.79	78.75	355.54	6.92	17.93	24.85	
S	Iraq	1936	132.30	—	132.30	—	—	—	
P 342800	Italy	8-20-36	212.35	68.00	280.35	5.31	14.02	19.33	
P 37130	Mexico	6-28-35	127.02	—	127.02	6.35	6.35	12.70	
P 37131	Mexico	6-28-35	127.02	—	127.02	6.35	6.35	12.70	
S 50327	Poland	6-26-36	357.11	—	357.11	—	—	—	
P 25223	Roumania	9-10-36	214.89	74.25	289.14	7.16	19.44	26.60	
P 10/36	Trinidad	7-9-36	167.04	—	167.04	5.96	11.93	17.89	
P 2183	Turkey	1936	322.78	78.75	401.53	—	26.77	26.77	
S 196723	USSR	6-25-36	405.21	—	405.21	405.21	—	405.21	Abandoned—Prior
P 1663	Venezuela	10-29-36	194.02	69.93	263.95	3.24	26.50	29.74	
Totals			71,145.74	6,412.27	77,558.01	7,607.28	3,301.73	10,909.01	

(Testimony of D. S. Jeppson.)

TECHNICRAFT ENGINEERING CORP.
5610 South Soto Street, Los Angeles, California

Item 25-C—Other Deductions

Auto Expense	31.53
Blueprints and Drawings	63.96
Dues and Subscriptions	17.75
Engineering Fees	6,551.43
General Expense	102.07
Heat and Light	317.18
Insurance	118.38
Legal and Auditing	752.45
Materials and Supplies	735.33
Office Expense	40.40
Printing and Stationery	73.47
Royalties Expense	6,448.35
Telephone and Telegraph	12.14
Traveling Expense	10.69
Development Costs Abandoned	4,540.13
Total	19,815.26

DUPLICATE—Page 1

1937 RETURN
OF
CAPITAL-STOCK TAX
For Year Ending June 30, 1937

DOMESTIC CORPORATIONS

This return must be filed, in triplicate, and received by the Collector of Internal Revenue for your district on or before July 31, 1937. The tax must be paid on or before that date.

AUG

Name: TE[illegible]CRAFT ENGINEERING CORP.

Address: 8610 So. [illegible] STREET, LOS ANGELES, CALIF.

None

None

[illegible] TOOLS DEVELOPMENT AND ENGINEERING

CALIFORNIA

1936

Yes

December 31, 1936

ORIGINAL DECLARED VALUE OF ENTIRE CAPITAL STOCK $

ADJUSTED DECLARED VALUE OF ENTIRE CAPITAL STOCK (Last item of Schedule I, page 2) $ 1,821,460.51

EXEMPTIONS.

	$ 1,821,460 51	
	$ 1,821	
	$ 1,821 00	

We, the undersigned, E. I. Wells President

E. G. [illegible] Secretary

Sworn to and subscribed before me this 29 day of July, 1937

CORPORATE SEAL

Notary Public

5.7

[illegible] established by the return for the year ended June 30, 1935. [illegible]

SCHEDULE [illegible] ADJUSTMENT OF ORIGINAL DECLARED VALUE OF ENTIRE [illegible]

TRANSACTIONS DURING THE INCOME TAX TAXABLE YEAR ENDED [illegible]

[illegible]

(Testimony of D. S. Jeppson.)

In addition to my work as Certified public Accountant I was also engaged in tax work. At the time of the filing of the first return of Technicraft, I gave consideration to whether or not Technicraft was a personal holding company. I gave my opinion to Technicraft to the effect that it was not a personal holding company.

I had conferences from time to time with auditors of the Collector of Internal Revenue who examined and audited the returns [380] of Technicraft. In the course of these audits, I advised the auditor of all the facts that are available to the Government now. He had access to all records, papers, documents, and files of Technicraft. The books contained a description of the nature of Technicraft's income as royalty and the books revealed that the stock was owned by four individuals. Technicraft received certain refunds for overassessments. Technicraft received a refund of $278.37 for the year 1935 as shown by letter received from the Collector of Internal Revenue dated June 18, 1937, and received by Technicraft on June 19, 1937.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 26, a letter dated June 18, 1937, from the Collector of Internal Revenue addressed to Technicraft Engineering Corp.

(Testimony of D. S. Jeppson.)

PETITIONERS' EXHIBIT No. 26

TREASURY DEPARTMENT

Internal Revenue Service
Los Angeles, Calif.
June 18, 1937.

Office of the Collector
Sixth District of California
In Replying Refer to

IT: Refunds: MB

Jun. 19, 1937, Rec'd.

Technicraft Engineering Corporation,
5610 South Soto Street,
Los Angeles, California.

Receipt is acknowledged of Notice of Refund, which has been signed in accordance with our instructions. There is attached hereto check drawn on the Treasurer of the United States, representing overpayment of Income Tax as indicated below:

Amount	Check Number	Refund	Interest	Year	Schedule Number
$285.70	441,307	$278.47	$7.23	1935	IT :59866

The interest, if any, included herein is taxable income, and must be reported in your income tax return for the year in which received.

NAT ROGAN,
Collector.

#239

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

TREASURY DEPARTMENT

Office of
Commissioner of Internal Revenue
Washington

Income Tax Unit
IT:C:CC Jun. 19, 1937, Rec'd.

Certificate of Overassessment
Number: 1410971
Allowed: $278.47
Schedule No. 59866

Technicraft Engineering Corporation,
4439 Santa Fe Avenue,
Los Angeles, California.

Sirs:

An audit of your income tax return, Form 1120, and a consideration of all the claims (if any) filed by you for the calendar year 1935 indicates that the tax assessed for that year was in excess of the amount due:

	Income Tax	Excess-Profits Tax
Tax assessed:		
Original, account #403021	$6,603.88	$740.58
Correct tax liability	6,399.66	666.33
Overassessment	$ 204.22	$ 74.25

The adjustments producing this overassessment are shown in the revenue agent's report, a copy of which has been furnished you, to which you have consented in a signed agreement.

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 322 of the Revenue Act of 1934.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

F. J. HUDSON,

Head of Division.

Abated: $

Credited: $

To Tax. Year

Credited: $

To Tax. Year

Refunded: $278.47.

Interest: $7.23.

Note.—The interest, if any, included herein is taxable income, and must be included in your income tax return for the year in which received.

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

TREASURY DEPARTMENT

Washington

Office of— May 5, 1937.

Commissioner of Internal Revenue.

Address Reply to—

Commissioner of Internal Revenue

and Refer to IT:Cl:CC—3:MBW

May 10, 1937, Rec'd.

Technicraft Engineering Corp.,

5610 South Soto Street,

Los Angeles, California.

Sirs:

Receipt is acknowledged of your letter dated April 15, 1937, addressed to the Internal Revenue Agent in Charge, Los Angeles, California relative to an overassessment of income tax for the year 1935.

You are advised that a Certificate of Overassessment has been prepared in the amount of $278.47 and has been forwarded to the Collecter of Internal Revenue, Los Angeles, California for the adjustment of the account.

Any part of the overassessment which has not been paid will be abated; any part thereof which has been paid will be credited to tax due the Government for other years, and the balance, if any, will be refunded by Treasury check.

Respectfully,

CHAS. T. RUSSELL,

Deputy Commissioner.

By T. F. LANGLEY, Head of Division.

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

6/17—Mailed notice of refund to L. A. Office at 939 So. Broadway. $285.70.

TREASURY DEPARTMENT
Internal Revenue Service
939 South Broadway
Los Angeles, Calif.
April 23, 1937.

Office of—
Internal Revenue Agent in Charge,
Los Angeles Division. Apr. 24, 1937, Rec'd.

Technicraft Engineering Corp.,
5610 South Soto Street,
Los Angeles, California.

Dear Sirs:

With reference to your letter of April 15, 1937, inquiring about a refund of income and excess profits tax for the year 1935, you are advised that this office has no information subsequent to the time of forwarding the Revenue Agent's report to Washington on October 17, 1936.

However, your letter is being forwarded to Washington for appropriate attention.

Respectfully,
GEORGE D. MARTIN,
Internal Revenue Agent in Charge.

AGM:CF
CC Bureau.

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

April 15, 1937.

Internal Revenue Service,
939 South Broadway,
Los Angeles, Calif.

Gentlemen:

We have your form letter #892 addressed to the Technicraft Engineering Corp., 4439 Santa Fe Avenue, (present address 5610 So. Soto St.) regarding your report of October 17, 1936 on their 1935 Income and Excess Profits Tax. This report indicates an over-assessment of $304.22 on income tax and $74.25 on excess profits tax. If action has not already been taken by the Commissioner of Internal Revenue at Washington, D. C. kindly advise when we may expect to receive a report on same.

Yours very truly,

TECHNICRAFT ENGINEERING CORP.

By .....

B. G. Peters

BGP: eb

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

IT:R

TREASURY DEPARTMENT

Internal Revenue Service
939 South Broadway
Los Angeles, Calif.

[Seal]

Office of—
Internal Revenue Agent in Charge.
Technicraft Engineering Corp.,
4439 Santa Fe Avenue,
Los Angeles, California.

In re: Income and Excess-Profits Tax.
Date of Report: Oct. 17, 1936.
Years Examined: 1935.

Sirs:—

Inclosed herewith you will find copy of report covering examination recently made by a representative of this office, concerning your income tax liability, which is furnished for your information and files. The original of this report has been forwarded for final action to the Commissioner of Internal Revenue at Washington, D. C.

Kindly acknowledge receipt of the inclosed report to the undersigned by return mail.

Respectfully,

Inclosures:

GEORGE D. MARTIN,
Internal Revenue Agent in Charge.

Form 892
Revised Oct. 1930

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

Form 886-T—August, 1928
Treasury Department
Internal Revenue Service

Examining Officer
V. C. Harp.

Name, Technicraft Engineering Corp.

STATEMENT OF TOTAL TAX LIABILITY

Income Tax

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report: Deficiency	Adjustments Proposed in Accompanying Report: Overassessment	Correct Tax Liability
1935	$ 6,603.88	$.....	$ 204.22	$ 6,399.66
Totals	$.....	$.....	$.....	$.....

NOTE

The amount shown in the first column of the above statement is the amount assessed on the original return except as indicated in the following summary of adjustments previously made.

Year 19

Original tax	$.....
Deficiency assessed....., 19 , ...	.....
or	
Overassessment scheduled, 19 , ...	.....
Net tax previously assessed	.....

Year 19

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

Form 886-T—August, 1928
Treasury Department
Internal Revenue Service

Name, Technicraft Engineering Corp.

STATEMENT OF TOTAL TAX LIABILITY

Excess-Profits Tax

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report: Deficiency	Adjustments Proposed in Accompanying Report: Overassessment	Correct Tax Liability
1935	$ 740.58	$.....	$ 74.25	$ 666.33
Totals	$.....	$.....	$.....	$.....

NOTE

The amount shown in the first column of the above statement is the amount assessed on the original return except as indicated in the following summary of adjustments previously made.

Year 19

Original tax ..... $.....

Deficiency assessed....., 19 , ...

or

Overassessment scheduled, 19 , ...

Net tax previously assessed..... .....

Year 19

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

Technicraft Engineering Corp. Year 1935

TABLE OF CONTENTS

PRELIMINARY STATEMENT

The above stated overassessment results from allowance of accrued capital stock tax.

The findings of this report were explained to Mr. W. T. Wells, president, who agreed thereto and acceptance form 873 is submitted.

This corporation was organized in 1934 to acquire by purchase and develop patents on oil tools and processes.

Schedule 1

ADJUSTMENT TO NET INCOME

Net income as disclosed by return		48,028.20
As corrected		46,543.20
Net adjustment as computed below		1,485.00
Unallowable deductions and additional income:	None	
Total		None
Nontaxable income and additional deductions:		
(a) Accrued capital stock tax	1,485.00	
Total		1,485.00
Net adjustment as above		1,485.00

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

Technicraft Engineering Corp. **Year 1935**

Schedule 1A

EXPLANATION OF ITEMS

(a) Accrued capital stock tax 1936	1,750.00
Less capital stock tax paid 1935	265.00
Additional deduction allowed	1,485.00

Gross income was accurately reported.

Royalties paid, $2,600.00, represents amounts paid for lease of patents not owned.

Officers are professional engineers and their compensation does not appear excessive.

Legal and auditing expense consists of retainers for professional service and contains no amounts applicable to patent costs.

Bad debts, $3,795.41, represents loss of investment where royalty interests were purchased since incorporation and wells were abandoned in 1935 as nonproductive.

Patent amortization was properly computed upon costs on return. Patents were depreciated on books at 20% of cost resulting in a surplus charge of $7,337.19.

Reserve, $48,600.00 was properly treated as an allocation of surplus.

(Testimony of D. S. Jeppson.)

Petitioners' Exhibit No. 26—(Cont.)

Form 886 C
Treasury Department
Internal Revenue Service
Revised August 1935

Name of corporation, Technicraft Engineering Corp.

Schedule No. 2

COMPUTATION OF TAX

Year ended Dec. 31, 1935

Income Tax

Net income for taxable year		$ 46,543.20
Less net loss (not allowed as a deduction after Jan. 1, 1933)		
Net income		$ 46,543.20
Income tax at 13¾ percent		$ 6,399.66
Less: Income tax paid at source	$	
Taxes paid to a foreign country		
Total income tax assessable		$ 6,399.66
Total previously assessed		6,603.88
Overassessment		$ 204.22
Capital stock value declared on capital stock tax returns for excess-profits tax purposes		$265,732.99
Exemption claimed for excess-profits tax purposes		$ 33,216.62

If a change in excess-profits tax is determined for 1933, computation should be shown below this line.

Net Income as above	46,543.20
E. P. Tax credit	33,216.62
Balance subject to excess-profits tax	13,326.58
Excess-profits tax 5%	666.33
" " " assessed	740.58
Excess-profits tax overassessment	$ 74.25

[Endorsed]: U.S.B.T.A. Filed Jun. 6, 1940.

(Testimony of D. S. Jeppson.)

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 27, a summary of net income during the calendar year 1937 of either Technicraft Engineering Corp., or Lane-Wells Company, a Delaware corporation, said exhibit being introduced together with a stipulation of counsel that it is a summary taken from the books of Technicraft showing income for the periods designated thereon.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Petitioners' Exhibit 28, a statement of assets and liabilities as shown by the books of Technicraft Engineering Corp., for certain periods, which have a bearing upon the issue of the dividends paid credit. It was stipulated that Petitioners' Exhibit 28 represents a summary of items upon all the books of the taxpayer.

Cross-Examination

The items of merchandise sales by Technicraft were reported as merchandise sales, but were credited to development project accounts to which they related. It was sort of an offset against a patent project. For example, the cost of the making of a par-
[381] ticular model under a patent project was accumulated over a period of time and charged to that account. When the model was sold to the Lane-Wells companies, these same costs were taken out of that account and represented the charge to the Lane-Wells companies. In speaking of a proj-

(Testimony of D. S. Jeppson.)

ect, I mean activities which would result in an acquisition of a patent for some particular purpose. The total amount spent on a project or patent would be regarded as capital and the items capitalized, less the amount of any merchandise which had been charged to that account and subsequently charged to the Lane-Wells companies when sold to them. If a patent was obtained, the net amount would be regarded as capital cost of the patent. In case a patent was not obtained, the net amount would remain in development project account until such time as it was abandoned or otherwise disposed of. If it was determined that a process was of no practical use, it was abandoned and charged off. It was then deducted from the net income of the corporation under the account entitled Development Projects Abandoned, and would be a charge against profit and loss of the company, or the receipts of the corporation. I had contact with the representatives of the Bureau of Internal Revenue in connection with income tax and other tax liabilities of Technicraft, at the time that regular examinations were made. I would have to guess at the dates. One I can come fairly close to would be in the fall of 1936 or the early part of 1937, because of the Revenue Agent's report being dated in June of 1937. I do not recall the name of the Revenue Agent and would have to refresh my memory, the nature of my contact being a matter of the examination of the company's records. I gave him access to the books and records and answered any

(Testimony of D. S. Jeppson.)

questions that he might have had about them. I do not recall any special inquiry that he made. [382]

During the year 1937, for the period beginning January 1, 1937, and ending August 31, 1937, I know of no other books of account that were kept other than the books of account of Technicraft, which would reflect the income on Petitioners' Exhibit 27. All of the income shown on Petitioners' Exhibit 27 is recorded on the books of Technicraft; none of it is allocated to other corporations; and no trustee account or similar account was set up. Referring to Petitioners' Exhibit 28, and particularly to the account designated Taxes Payable as of August 31, 1937, the figure $41,408.02 principally represents accrued income taxes; $27,003.71 being accrued income taxes for 1937 and the remainder being various miscellaneous taxes, such as real estate, etc.

There is no reserve on the books of Technicraft or any record of a liability showing liability or reserve for liabilities for the taxes in controversy in this proceding either as of August 31, 1937, or any time during the year 1937. [383]

Redirect Examination

The first time that I knew that any claim was being made that Technicraft was a personal holding company was during the latter part of 1937 or the early part of 1938, which was approximately a year and six months after the reorganization of June 1, 1937. I first learned of the fact when a Revenue Agent came into the office of Lane-Wells

(Testimony of D. S. Jeppson.)

Company to verify or examine the records of all of the companies to determine the adequacy of the reorganization agreement. Sometime subsequent to his examination, he notified us or raised the question of personal holding company in connection with Technicraft. This was the first time that I or any of the officers of the company knew of any such claim. In the return of Technicraft for the year 1935 (Petitioners' Exhibit 23), I designated the nature of the income of Technicraft as "services, professional, business, amusement, domestic and all other" and I did not show the income as royalty, but as compensation for services. To the best of my recollection, in preparing the return for that year, knowing as I did the nature of the income of Technicraft, it was so designated. There was no particular reason why it should have been designated that way that year and some other way in the other years.

In 1936 I indicated that the nature of the business was "machinery, electrical and equipment, other metals, products and processes, and professional and scientific instruments," but the statement under item 26 showed income as royalty. I cannot explain why the term [384] "royalty" was used on the books of Technicraft to income that it received from the various Lane-Wells companies other than it was merely a term to designate income. Any other term might have been used.

Thereupon counsel for petitioners offered, and there was received in evidence, marked Pe-

(Testimony of D. S. Jeppson.)

titioners' Exhibit 29, the report of Revenue Agent transmitted to Technicraft Engineering Corporation on October 21, 1938, such document being received by the Board for the limited purpose of showing how the Commissioner determined the deficiency.

Petitioners rested.

The Respondent rested without introduction of any evidence whatsoever.

Petitioners Lane-Wells Company and Technicraft Engineering Corporation tender and present the foregoing as their Statement of Evidence in the above consolidated case, and pray that the same may be approved by the United States Board of Tax Appeals and made a part of the record in this cause.

R. DECHTER,
Attorney for Petitioners

Agreed to.

J. P. WENCHEL,
Counsel for Respondent

[Endorsed]: U. S. B. T. A. Filed June 15, 1942.

[385]

[Title of Circuit Court of Appeals and Causes.]

STIPULATION

Whereas, Lane-Wells Company has appealed from the decision of the United States Board of Tax Appeals in Docket No. 99829; and

Whereas, Technicraft Engineering Corporation has appealed from the decision of the United States Board of Tax Appeals in Docket No. 99830; and

Whereas, said appeals are now pending in the United States Circuit Court of Appeals for the Ninth Circuit; and whereas said two cases aforementioned were consolidated in the United States Board of Tax Appeals by stipulation of counsel and order of the United States Board of Tax Appeals upon the trial of said cases; and

Whereas, but one trial was held and one opinion and judgment entered in said Board of Tax Appeals; and

Whereas, the matters pending on appeal can be disposed of most expeditiously if the said appeals are now consolidated; [386]

Now, Therefore, It Is Hereby Stipulated and agreed by and between the parties hereto through their respective counsel that the appeals taken by Lane-Wells Company and Technicraft Engineering Corporation in the above entitled cases may both be consolidated and heard by the United States Circuit Court of Appeals for the Ninth Circuit under one transcript for said cases.

Dated this 19th day of March, 1942.

R. DECHTER,
Attorney for Petitioners

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue

It is so ordered March 20, 1942.

FRANCIS A. GARRECHT,
Justice of the Circuit Court of Appeals of the United States for the Ninth Circuit.

A true copy:
Attest: March 20, 1942.

PAUL P. O'BRIEN, Clerk.

[Endorsed]: (S) Paul P. O'Brien. Filed March 20, 1942.

[Endorsed]: U. S. B. T. A. Filed March 27, 1942.

[387]

[Title of Board and Causes.]

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 392, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 25th day of June, 1942.

[Seal] B. D. GAMBLE,
Clerk, United States Board of Tax Appeals.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10183

B. T. A. Docket No. 99829

GUY T. HELVERING, Commissioner of Internal Revenue,

Petitioner on Review,

vs.

LANE-WELLS COMPANY, TRANSFEREE,

Respondent on Review,

LANE-WELLS COMPANY,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

ORDER EXTENDING TIME FOR TRANSMISSION AND DELIVERY OF PETITION FOR REVIEW

Upon consideration of the joint motion filed herein by the respective parties on review and good cause appearing to the Court for the granting of such motion, it is by the Court ordered:

That the motion is granted as made and that the time for the preparation and transmission to the Clerk of this Court of the records sur petition for

review filed in the above-entitled cause be and it hereby is extended to and including June 22, 1942.

It is Further Ordered that the Clerk of this Court is directed to transmit to the Clerk of the Board of Tax Appeals a certified copy of this order.

FRANCIS A. GARRECHT,
Judge, U. S. Circuit Court of Appeals

Now, June 27, 1942, the foregoing order certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

A true copy:
Attest:
[Seal] (s) PAUL P. O'BRIEN,
March 14, 1942.

[Endorsed]: Filed March 14, 1942. Paul P. O'Brien, Clerk.

[Endorsed]: U. S. B. T. A. Filed March 18, 1942.

[Title of Circuit Court of Appeals and Cause—B.T.A. Docket 99830.]

ORDER EXTENDING TIME FOR TRANSMISSION OF PETITION FOR REVIEW

Upon consideration of the *m*oint motion filed herein by the respective parties on review and good cause appearing to the Court for the granting of such motion, it is by the Court ordered:

That the motion is granted as made and that the

time for the preparation and transmission to the Clerk of this Court of the records sur petition for review filed in the above-entitled cause be and it hereby is extended to and including June 22, 1942.

It is Further Ordered that the Clerk of this Court is directed to transmit to the Clerk of the Board of Tax Appeals a certified copy of this order.

FRANCIS A. GARRECHT,
Judge, U. S. Circuit Court of Appeals.

Now, June 27, 1942, the foregoing order certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals

A true copy:
Attest: March 14, 1942.
[Seal] (s) PAUL P. O'BRIEN,

[Endorsed]: Filed March 14, 1942. Paul P. O'Brien, Clerk.

[Endorsed]: U. S. B. T. A. Filed March 18, 1942.

[Title of Circuit Court of Appeals and Causes—B.T.A. Docket Nos. 99829, 99830.]

ORDER EXTENDING TIME FOR TRANSMISSION OF PETITION ON REVIEW

Upon consideration of the joint motion filed herein by the petitioners on review, and good cause appearing to the Court for the granting of such motion, It is by the Court Ordered:

That the motion is granted as made and that the

time for the preparation and transmission to the Clerk of this Court of the record sur petition for review filed in the above entitled cause be and it hereby is extended to and including July 22, 1942.

It is Further Ordered that the Clerk of this Court is directed to transmit to the Clerk of the Board of Tax Appeals a certified copy of this order.

CURTIS D. WILBUR,
Judge, U. S. Circuit Court of Appeals.

Now, June 27, 1942, the foregoing order certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[Endorsed]: Filed June 17, 1942 Paul P. O'Brien, Clerk.

A true copy:

Attest:

[Seal] (s) PAUL P. O'BRIEN,
Clerk.

June 17, 1942.

[Title of Board and Causes.]

ORDER RE EXHIBITS

The praecipe filed in the above proceedings at item 9 calls for the inclusion of all exhibits in the review record. Exhibits 6, 7, 8, 9, 10, 11, 12 and 13 are not susceptible to reproduction in the printed record, and it is therefore,

Ordered: That pursuant to the provisions of Rule 75, Paragraph i of the Rules of Civil Procedure as adopted by the United States Circuit Court of Appeals for the Ninth Circuit, the Clerk of the Board transmit with the transcript of record the originals of Exhibits 6, 7, 8, 9, 10, 11, 12 and 13 for such use as the Court may deem necessary, and with instructions to the Clerk of the Court to return to the Board said original Exhibits after they have served their purpose in the Court.

(Signed) EUGENE BLACK,
Member.

Dated: Washington, D. C. June 19, 1942.

Now, June 27, 1942, the foregoing order certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[Endorsed]: No. 10183. United States Circuit Court of Appeals for the Ninth Circuit. Lane-Wells Company, a corporation, and Technicraft Engineering Corporation, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petitions to Review a Decision of the United States Board of Tax Appeals.

Filed July 1, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10183

B. T. A. No. 99829

LANE-WELLS COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

B. T. A. No. 99830

TECHNICRAFT ENGINEERING CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DESIGNATION OF POINTS TO BE RELIED UPON ON REVIEW

Come now the petitioners and in pursuance of Subdivision 6, Rule 19 of the Rules of this Court, and do hereby file their statement of the points upon which petitioners intend to rely in this review.

1. The United States Board of Tax Appeal erred in determining that Technicraft Engineering Corporation was a personal holding company for the years 1934 to 1937 inclusive.

2. The said Board erred in failing to determine that the amounts of Technicraft's income designated as royalty were in fact compensation for tangible services rendered to affiliated corporations and as such did not constitute "personal holding company income" within the meaning of the Revenue Acts applicable.

3. The said Board erred in basing its decision in part upon the ground that no evidence was introduced to show what portion of Technicraft's income, if any, was derived from engineering services or from non-patentable devices as distinguished from patents, the evidence being clear and convincing that none of the income was attributable to compensation for the use of patents, but that all of said income was for engineering services.

4. The Board erred in its finding that the agreement between W. G. Lane and W. T. Wells to set aside 15% of gross income for research and development was limited only to Lane-Wells Co., a California corporation, the evidence being clear and convincing that it was the agreement that they were to set aside 15% of all their gun perforating business, and not limited alone to Lane-Wells Co., a California corporation.

5. The Board erred in holding that despite Technicraft's good faith and reasonable cause in not filing forms 1128 that the assessment of penalty was nevertheless mandatory.

6. The Board erred in holding that the failure of Technicraft to file form 1120H for the years

1934 to 1935 prevented the statute of limitations from barring assessments with respect to the 1934 and 1935 income of Technicraft.

Dated this 12 day of Aug., 1942.

RAPHAEL DECHTER,
By HARRY A. PINES,
Attorneys for Petitioners.

[Endorsed]: Filed Aug. 13, 1942.

[Title of Circuit Court of Appeals and Causes.]

DESIGNATION BY THE PETITIONERS OF PORTIONS OF RECORD NECESSARY FOR CONSIDERATION OF PETITIONS FOR REVIEW

Come now the Petitioners and in pursuance of Subdivision 6, Rule 19 of the Rules of this Court, file this, their designation of the portions of record necessary for consideration of the Petitions for Review.

1. Docket entries of proceedings before the Board of Tax Appeals in each of the above docket numbers;

2. Original petitions filed by petitioners Lane-Wells Company and Technicraft Engineering Corporation;

3. Answers to said original petitions;

4. Findings of Fact and Opinion of Board promulgated on January 31, 1941, being 43 B. T. A. No. 63;

5. Supplemental Opinion of the Board modify-

ing some of its former Findings and Conclusions, September 25, 1941;

6. Judgment and final order of the Board, of November 19, 1941;

7. Petitions for Review filed by the above petitioners on February 16, 1942;

8. Petitioners' Exhibits 1 to 13 inclusive and 22 to 26 inclusive.

9. All of the statement of evidence proposed by the Petitioners except the following eliminations, to-wit:

(a) Eliminate all of the second paragraph on page 20 starting with the words, "I am familiar * *", and ending at the caption "Cross-Examination", in the middle of page 21.

(b) Eliminate all of the paragraph on page 24 starting with the words "When Lane-Wells Company * *" and ending with "about September 27th."

(c) Eliminate the last three paragraphs on page 26. (indented)

(d) Eliminate the last paragraph on page 35, starting with the words "The assets of Technicraft * *" including the first three lines on page 36.

10. Orders extending time for transmission and delivery of record and order extending time for the payment of the estimated expense of printing record;

11. This Designation of portions of the record;

12. Designation of points to be relied upon on review;

13. Stipulation of March 19, 1942 for consolidation of records and order thereon of March 20, 1942;

14. Notice of filing of this Designation and admission of service thereof;

15. Notice of filing of Designation of points relied upon on review.

Dated this 12th day of August, 1942.

RAPHAEL DECHTER,
By HARRY A. PINES,
Attorneys for Petitioners.

[Endorsed]: Filed Aug. 12, 1942.

DESIGNATION BY THE RESPONDENT OF ADDITIONAL PORTIONS OF RECORD TO BE PRINED

(Western Union Telegram)

FAX117 Gvt. TWS Paid 3—Washington D. C. 25 644 P

Paul P. O'Brien

Clerk Circuit Court of Appeals Ninth Circuit S Fran

Re number ten one eighty three Lane Wells Company and Technicraft Engineering Corporation against Commissioner respondent designates for printing following portions of Record in addition to those designated by petitioners color: petitioners exhibits nineteen comma twenty and twenty one stop We are duplicating this wire to petitioners counsel (45 GRS)

SAMUEL O. CLARK, JR.
Assistant Attorney General

(45 GRS)

[Endorsed]: Filed Aug. 26, 1942.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10183

LANE-WELLS COMPANY, A CORPORATION, AND TECHNICRAFT ENGINEERING CORPORATION, PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Upon Petitions to Review Decisions of the Tax Court of the United States

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Wednesday, January 27, 1943

Before DENMAN, HANEY, *and* HEALY, Circuit Judges.

Order of submission

Ordered petition to review herein argued by Mr. Raphael Dechter, counsel for petitioners, and by Mr. Arthur A. Armstrong, Special Assistant to the Attorney General, counsel for respondent, and submitted to the court for consideration and decision.

Excerpt from Proceedings of Wednesday, February 10, 1943

Order directing filing of opinion and filing and recording of judgment

By direction of the Court, ordered that the typewritten opinion[1] this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

Judgment

Upon petitions to review decisions of the Tax Court of the United States.

This cause came on to be heard on the Transcript of the record from the Tax Court of the United States, and was duly submitted:

On consideration whereof, it is now here ordered and adjudged by this Court, that the decisions of the said Tax Court of the United States

[1] Opinion withdrawn by order of March 22, 1943.

in this cause be, and hereby are reversed, and that this cause be, and hereby is remanded to the said Tax Court of the United States for a recomputation of petitioners' income taxes for 1934, 1935 and 1936 in accordance with the opinion of this court.

[Endorsed:] Judgment. Filed and entered February 10, 1943. Paul P. O'Brien, Clerk.

Excerpt from Proceedings of Monday, March 22, 1943

Before DENMAN, HANEY, and HEALY, Circuit Judges.

Order directing withdrawal of opinion heretofore filed, and filing of opinion and denying petition for rehearing

By direction of the Court, it is ordered that the opinion of this court heretofore filed herein on February 10, 1943, be, and hereby is withdrawn, and that the opinion this day rendered in this cause be forthwith filed by the clerk.

Upon consideration of the petition for rehearing of respondent, filed February 27, 1943, and within time allowed therefor by rule of court, for a rehearing of above cause, and by direction of the court, it is ordered that said petition be, and hereby is denied.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10,183—Mar. 22, 1943

LANE-WELLS COMPANY, A CORPORATION, AND TECHNICRAFT ENGINEERING CORPORATION, PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Upon petition for rehearing

Before DENMAN, HANEY, and HEALY, Circuit Judges.

The opinion filed in this case on February 10, 1943, is hereby withdrawn, and the following substituted therefor:

DENMAN, Circuit Judge:

The petitioning corporations seek a review of a decision of the United States Board of Tax Appeals, now Tax Court of the United States, sustaining respondent's determination of deficiencies and penalties on income surtax for the tax years 1934, 1935, and 1936 under the personal holding company income tax provisions of the Revenue Acts of 1934 and 1936.

On June 1, 1939, the Commissioner of Internal Revenue mailed to the Technicraft Engineering Corporation, transferor, and Lane-Wells Company (a Delaware corporation), transferee, respectively, notices asserting various tax deficiencies, including deficiencies in personal holding company surtax income and 25 per cent penalties for failure to file personal holding company returns for the three tax years in question.

Both the transferor and the transferee duly filed petitions for review, upon which the Board entered its decisions against both, sustaining the deficiencies and penalties.

The cases are brought to this court by petitions for review filed by the transferor and transferee. Pursuant to stipulation of the parties, this court ordered consolidation of the two appeals.

Petitioner Lane-Wells Company was formed in 1937 to take over the business of petitioner Technicraft Engineering Corporation and its affiliated companies. In 1937, following a reorganization in which Lane-Wells Company of Delaware acquired the stock of Technicraft, the latter conveyed all its assets to the Delaware corporation and was dissolved.

A. The validity of the returns as affecting the time limiting statutes and penalties.—The Board found that Technicraft, in good faith, claimed in its returns that it was not a personal holding company. It found further that the returns, filed in due time, showed all the facts necessary for the respondent to compute the taxes as a personal holding company obligation.[2]

However, the incomes were returned on Form 1120 for taxing corporations not holding companies, instead of Form 1120H for taxing holding company corporations. The Commissioner, upheld by the Board, drew the legal conclusion that such a return was "no return" whatsoever, and hence he was entitled to determine deficiencies thereon at any time—here in 1939, over four years after the 1934 return and over three years after the 1935 return were filed. It is not questioned that the 1936 return was assessed within the statutory time limit. The Commissioner also determined penalties of 25 per cent for each year on the theory that Technicraft had failed to file any returns and the penalties were upheld by the Board.

We do not agree that the returns are to be deemed not made. They started the running of the time for assessment.

Construing analogous statutes of limitation, the Supreme Court holds that where one kind of income taxpayer in good faith files a return on a form provided for another kind of income taxpayer, which return disclosed the facts upon which the Commissioner may compute the income tax actually due from the taxpayer, the return filed is a return which starts the running

---

[2] The finding is

"4. * * * Taxpayers income and excess profits tax returns filed on Form 1120 made a full disclosure of its gross income and deductions and its resulting net income. * * * *"

of the time within which the Commissioner may assess the tax. Germantown Trust Company, Trustee, v. Commissioner, 309 U. S. 304, 307, 310. The pertinent language of the Supreme Court and the cases cited showing the principle to be long recognized are (p. 310),

"It cannot be said that the petitioner, whether treated as a corporation or not, made no return of the tax imposed by the statute. Its return may have been incomplete in that it failed to compute a tax, but this defect falls short of rendering it no return whatever. Zellerbach Paper Co. v. Helvering, 292 U. S. 172, 180; Commissioner v. Stetson & Ellison Co., 43 F. 2d 553; United States v. Tillinghast, 69 F. 2d 718; Mabel Elevator Co., 2 B. T. A. 517; Abraham Werbelovsky, 8 B. T. A. 442, 446; Estate of F. M. Stearns, 16 B. T. A. 899; J. R. Brewer, 17 B. T. A. 704."

See also, Denman v. Motter (D. Kan. 1930) 44 F. 2d 648, where no form available and return made on plain paper.

We are unable to see any difference in principle between the Germantown decision and the instant case, where one of the class of income taxpayers called "holding companies" files, in good faith, a return on a form provided for companies not holding companies which discloses the facts necessary to compute the tax due from the holding company.

The Board attempts to distinguish the Germantown case on the ground that though both forms 1120 and 1120H are for income taxpayers under the income tax provisions of the Act of 1934, taxpayer used Form 1120 under a tax imposed on it under Title I of the Act, while taxpayer should have used Form 1120H under a tax imposed by Title I A. The attempted distinction is that the tax under Title I is a "separate and distinct tax" from the tax under Title IA. The distinguishing is not sound. In the Germantown case the fiduciary return on Form 1041 returns income which is for computing a separate and distinct tax either on the trustee or the beneficiary. The tax on either is as much a "separate and distinct tax" from that on "associations taxable as corporations" as are separate and distinct the taxes on holding companies and companies not holding companies. Both are income taxes imposed by the same Act. The Act makes the statute of limitations applicable alike to all classes of returns.

The Treasury Department in 1934 attempted to forestall the rule of the Germantown case, established in 1940, by incorporating in the Regulations providing Form 1120H for holding companies a similar erroneous conclusion of law. This conclusion of law is stated in the Regulations as, "However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitation for assessment of the surtax imposed under Title IA." Art. 351-8, Treasury Regulations 86, promulgated under the Revenue Act of 1934.

The respodent's contention is that, despite the holding of the Germantown case, the contrary construction of the law placed in a regulation makes the construction of law a regulation within the regulatory

power of the Secretary of the Treasury. The statement of the proposition answers it. It is the function of the courts and not the Secretary to determine the legal effect of his Regulations requiring the use of forms for different classes of taxpayers.

The limitation and penalty provisions of the Revenue Act of 1934 here in question are (28 U. S. C. A. § 275, § 276, § 291, § 311).

"§ 275. Period of Limitation upon Assessment and Collection

Except as provided in 276—

(a) General Rule.—The amount of income taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * * * *"

(a) False Return or No Return.—In the case of a false or fraudulent return with intent to evade a tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

* * * * * * *"

"§ 291. Failure to File Return

In case of any failure to make and file a return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, 25 per centum of the tax shall be added to the tax, * * *."

"§ 311. [Transferee liability.] * * *

(b) Period of limitation.—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer—within one year after the expiration of the period of limitation for assessment against the taxpayer; * * *."

The 1934 taxes were not assessed within the four years of § 311, and Lane-Wells, transferee, is not liable for the tax for that year. Nor is Technicraft liable for the 1934 and 1935 taxes, assessed more than the three years of § 275 after its returns for those years.

Concerning the 1935 taxes, Lane-Wells claims that the Board could not hold it liable because of a stipulation that "Lane-Wells is liable as transferee for any taxes which may be found due from Technicraft." It contends that such a stipulation prevented the Board from holding it liable for a tax as transferee, after the statutory three year limit for assessing Technicraft. We do not agree. We are not required to determine whether the Commissioner has the power to waive any tax by stipulating that the time limited in the statute for assessment has passed, when it is apparent that it has not. Here the stipulation, while stating that the transferee is liable for the tax due from the transferor, does not state that it is not liable for a tax which was due from the transferor but no longer collectible from the transferor because of the three year statute of limitation. We hold that the Commissioner properly assessed against Lane-Wells, as transferee a tax in the amount

of that owed by Technicraft for the year 1935, though not assessable against the latter.

Since, under the Germantown decision, the good faith return of all facts necessary to compute a tax is a "return," though on a form for a different taxpayer, the Board erred in upholding the penalties determined by the Commissioner under § 276 and § 291 for the tax years 1934, 1935 and 1936.

B. Technicraft is a personal holding company and it and Lane-Wells, transferee, are liable for deficiencies assessed against Technicraft for the years 1935 and 1936.[2]

Technicraft, a California corporation, with its principal office in Los Angeles, was organized in December 1932. Throughout the periods in controversy its entire stock was owned by W. G. Lane, W. T. Wells, and their wives. These four individuals also owned the entire stock of Lane-Wells Company of California, Lane-Wells Company of Oklahoma, Lane-Wells Company of Texas, and Lane-Wells International, Inc. Lane and Wells were directors and officers of the various affiliated companies. Petitioners concede that Technicraft is liable for the tax as a holding company, unless they have maintained their burden of proof before the Board that the Commissioner erred in deciding that 80 per cent of Technicraft's income in 1935 and 1936 was from "royalties" as defined in Treasury Regulations 94 promulgated for the Revenue Act of 1936, of which Art. 351–2 (1) provides,

> "(1) *Royalties.*—The term 'royalties' includes amounts received for the use of or for the privilege of using patents, copyrights, secret processes and formulas, good will, trade marks, trade brands, franchises, and other like property. * * *."

The Board held that the income taxed by the Commissioner was made up in large part from royalties as so defined. There was no segregation in the evidence of the amounts other than royalties, or proof that such other amounts exceeded 20 per cent of the income. Since the evidence shows a very substantial portion of the income to be royalties and there is no segregation, the finding of the Board that petitioners have not proved their negative, i. e., that the royalties did not equal 80 per cent of the income, must be sustained.

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[2] Revenue Act of 1936, c. 690, 49 Stat. 1648:

"SEC. 351. SURTAX ON PERSONAL HOLDING COMPANIES.

* * * * * * *

(b) Definition.—As used in this title—

(1) The term 'personal holding company' means any corporation (other than a corporation exempt from taxation under section 101, and other than a bank as defined in section 104, and other than a life-insurance company or surety company) if—(a) at least 80 per centum of its gross income for the taxable year is derived from royalties, dividends, interest, annuities, and (except in the case of regular dealers in stocks or securities) gains from the sale of stock or securities, and (b) at any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals. * * *."

Petitioners further contend that none of the income consisted of royalties, because—although it was so denominated in agreements with the held companies—there was a prior agreement between Technicraft and the companies that all that was to be paid by them to Technicraft was for engineering services. We assume there was testimony from which such an agreement might be inferred. Our review, however, is confined to the determination whether "there is substantial evidence to support the conclusion" of the Board to the contrary. Helvering v. Kehoe, 309 U. S. 277, 279. There is abundant such evidence.

Technicraft had patent rights in a perforator device known as the Mims patent, for shooting into oil bearing stratification or through oil well piping to free the flow of mineral oil or gas. The held companies were in the business of furnishing such perforator services. Technicraft made contracts with each of the held companies for the use of the Mims patent, for which each agreed to pay a "royalty" of 15 per cent of its gross receipts. It was the moneys so denominated "royalties" which Technicraft received which it returned to the Treasury for 1935 and 1936, also stating them to be "royalties." In the royalty agreements with the Oklahoma and Texas companies it was provided,

"I. Definitions:

The term 'Perforators' shall be construed to mean not only the patent specifically mentioned hereinbefore, but also any and all inventions, applications, patents and any continuations, divisions, and or reissues thereof and whether in the nature of apparatus or processes which the Licensor [Technicraft] now owns or controls or which it may at any time during the life of this agreement own or control and which relate or are accessories to said Perforators. The term 'Patent Rights' shall be construed to embrace as a group all the patents and applications herein specified or referred to or implied. The term 'gross receipts' shall be construed to mean the total receipts derived in any manner whatsoever from the manufacture and/or use of any and all apparatus or processes covered by said Patent Rights without deductions of any kind or character.

* * * * * * *"

"IV. Royalties:

The royalty payments on the Patent Rights herein licensed shall be fifteen percent (15%) of the gross receipts; minimum royalties shall be not less than Seven Hundred and Fifty Dollars ($750.00) per month.

* * * * * * *"

Technicraft conducted experiments, purchased test instruments, and built models of devices, some of which were sold to the Lane-Wells Company of California. Lane and Wells and employees of Technicraft assigned more than 50 patents to Technicraft. Technicraft owned at least 19 abandoned and unfiled inventions. In 1935 it had from 85 to 100 patents or patent applications which it was furnishing to the Lane-Wells companies by June 1, 1937, and of which seven or eight related to the basic principle of the Mims patent.

Obviously, the Board could reject the testimony of the prior agreements that the furnishing of these patents and models and mechanical devices or processes were mere professional engineering services paid for by the 15 per cent of gross income. It could infer that the transactions were just what they were called, "licenses" to use the patents models and devices upon which 15 per cent of the gross income from their use constituted "royalties." As stated, if, in addition to the licensed matter, non-royalty devices were given for the same 15 per cent consideration, there was no segregation to show that they amounted to over 20 percent of the taxed income. The Board properly decided that there were deficiencies in petitioners' income taxes for the years 1935 and 1936 in the amounts found in its decision.

Reversed and remanded for a recomputation of petitioners' income taxes for 1934, 1935 and 1936 in accord with this opinion.

Reversed and remanded.

The petition for rehearing is denied.

[Endorsed:] Opinion on Petition for Rehearing. Filed Mar. 22, 1943. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 10183

LANE-WELLS COMPANY, A CORPORATION, AND TECHNICRAFT ENGINEERING CORPORATION, PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Certificate of clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to record certified under rule 38 of the revised rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred-eighty-seven (287) pages numbered from and including 1 to and including 287, to be a full, true, and correct copy of the entire record, excluding certain original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the respondent and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 9th day of June 1943.

[SEAL] PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE 1943

Supreme Court of the United States

Order Allowing Certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket and assigned for argument immediately following No. 1. R. *Simpson & Co., Inc.*, vs. *Commissioner of Internal Revenue*.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

INDEX

CITATIONS

534500—43

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

LANE-WELLS COMPANY, A CORPORATION, AND TECHNICRAFT ENGINEERING CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit entered in this case.

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 47–85) is reported at 43 B. T. A. 463. The opinion of the Circuit Court of Appeals on petition for rehearing (R. 277–282) is reported in 134 F. 2d 977.

JURISDICTION

The judgment of the Circuit Court of Appeals on petition for rehearing was entered on March 22,

1943 (R. 283). The jurisdiction of this Court is invoked under Section 240 (a) of the Judiical Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The taxpayer filed corporate income tax returns on Form 1120 but did not file personal holding company returns on Form 1120-H as specifically required by Treasury regulations. The question is whether there was a "failure to file a return" within the meaning of Sections 276 (a) and 291 of the Revenue Acts of 1934 and 1936, with the consequence that an assessment for personal holding company tax may be made at any time, and a 25% penalty was incurred.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved may be found in the Appendix, *infra*, pp. 8–14.

STATEMENT

The Lane-Wells Company, a Delaware corporation, was organized in 1937 to take over the business of Technicraft Engineering Corporation and its affiliated companies. In 1937, following a reorganization in which Lane-Wells Company of Delaware acquired the stock of the Technicraft Corporation, the latter conveyed all its assets to the Delaware corporation and was dissolved. (R. 60–63.) It has been stipulated that Lane-Wells Company is liable as transferee for any taxes found due from the Technicraft Corporation (R. 65).

For the years 1934, 1935, and 1936 Technicraft Corporation timely filed the usual corporation income tax returns on Form 1120 (R. 63). It did not file personal holding company surtax returns on Form 1120 H for any of those years (R. 64).

Technicraft's 1934 corporate return showed gross income from royalties of $27,125.23, deductions of $11,392.24, and net income of $15,732.99. Its 1935 return showed "gross profits where inventories are not an income-determining factor" of $69,577.19, a discount of $13.90, a gross income of $69,591.09, and after deductions a net income of $48,028.20. Its 1936 return showed a gross income of $148,527.82, consisting of $822.01 interest, $2,500 rents, and $145,113.73 royalties, less a discount of $92.08, and after deductions a net income of $111,-460.51. In these returns it stated its business variously as "engineering," "engineering development," and "research and engineering." (R. 63–64.)

On June 1, 1939, the Commissioner determined that the Technicraft Corporation was a personal holding company in the years in question (deriving more than 80% of its income from royalties) and ascertained deficiencies accordingly (R. 32–45). Petitions were filed with the Board of Tax Appeals contending that the amounts of Technicraft's income designated on its income tax returns as "royalties" were in fact compensation for tangible services rendered to affiliated corpora-

tions and did not constitute "personal holding company" income (R. 66).

The Board of Tax Appeals held that a considerable part of Technicraft's gross income obviously accrued from royalties and that it would be necessary to sustain the Commissioner's determination in the absence of a showing by the taxpayer that more than 20% accrued from other sources (R. 65–72). The Board also held that the deficiency notices were timely because failure to file the personal holding company surtax returns for those years prevented the running of the period of limitations (R. 79–84). The Board further held that the imposition of the 25% penalty for failure to file personal holding company returns was mandatory (R. 84–85).

Upon consolidated appeals (R. 262–264) the court below sustained the Board in its decision that the Technicraft Corporation was a personal holding company (R. 281) but reversed its decision as to the timeliness of the deficiency notices and the imposition of the penalty (R. 277–283).[1]

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred in holding that the filing of corporate income tax returns on

[1] It was not questioned that the 1936 assessment was made within the statutory time limit and the Circuit Court of Appeals did not disturb it. Despite the holding that the deficiency notice for 1935 against Technicraft was untimely, the court below gave effect to the additional year allowed for assessments against transferees and held that the proceedings were timely with respect to Lane-Wells.

Form 1120 was sufficient to start the running of the period of limitations against assessment of personal holding company surtax and that such filing prevented the imposition of the statutory penalty for failure to file personal holding company surtax returns on Form 1120 H.

REASONS FOR GRANTING THE WRIT

The decision of the court below, to the effect that a corporate income tax return on Form 1120 was a sufficient return for the purpose of starting the running of the period of limitations and for avoiding the statutory penalty, is in conflict with the following decisions: *O'Sullivan Rubber Co.* v. *Commissioner,* 120 F. 2d 845 (C. C. A. 2d); *Lone Pine Lawn Corp.* v. *Helvering,* 121 F. 2d 935 (C. C. A. 2d); *R. Simpson & Co.* v. *Helvering,* 128 F. 2d 742 (C. C. A. 2d), certiorari granted June 7, 1943, No. 419, October Term, 1942; *Logan Coal & Timber Ass'n* v. *Helvering,* 122 F. 2d 848 (C. C. A. 3d). The decision below is also contrary to the principles expressed by the Circuit Court of Appeals for the Fourth Circuit in *Blenheim Co.* v. *Commissioner,* 125 F. 2d 906.

The granting of the writ in the *Simpson* case, *supra,* will involve a consideration of the effect of a failure to file a return on Form 1120 H, and petitioner in that case relied upon a conflict with the decision below.

The court below failed to give effect to the fact that the filing of returns on Form 1120 H was specifically required. Section 351 (c) of the Reve-

nue Acts of 1934 and 1936 (Appendix, *infra*) makes Section 54 applicable to the surtax on holding companies, and Section 54 authorizes the regulation requiring this additional return for personal holding companies. The legislative background of Section 351 is even more explicit. It is said in H. Conference Rep. No. 1385, 73d Cong., 2d Sess., p. 20 (1939–1 Cum. Bull. (Part 2) 627, 630, 631): "The Senate amendment provides for a separate return for the purposes of this surtax on personal holding companies. * * * The House recedes on amendment no. 45."

Treasury Regulations 86 and 94, Article 351–8 (Appendix, *infra*), prescribed this return, and the requirement was continued in Regulation 103, Sec. 19.508–1, promulgated under the Internal Revenue Code; those regulations may thus be deemed to have Congressional approval. *Helvering* v. *Winmill*, 305 U. S. 79.

Form 1120 H is not merely a supplementary sheet to the income tax return but a separate and distinct return for surtax purposes. Surtax on a personal holding company is laid on the "undistributed adjusted net income" as defined in Section 351 (b) (2) (3) of the Revenue Acts of 1934 and 1936. And Form 1120 H calls for critical information regarding liability for the personal holding company tax that does not appear on the usual corporate return. Unless Form 1120 H were filed, the Commissioner might never learn

that the corporation were even subject to the personal holding company tax.

In the light of the legislative history, and the cases cited above, the regulations involved cannot be considered unreasonable, and this case is distinguishable from *Germantown Trust Co. v. Commissioner*, 309 U. S. 304, where only one return was required.

Moreover, if the principle announced by the court below is to be generally followed, there would be a premium upon failure to file personal holding company returns. Under the decision below, the filing of corporate income tax returns would suffice to avoid the statutory penalty, and the delay caused by the failure to file Form 1120 H might well bar the collection of the unreported tax.

CONCLUSION

It is, therefore, respectfully submitted that this petition should be granted.

CHARLES FAHY,
Solicitor General.

JUNE 22, 1943.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 54. RECORDS AND SPECIAL RETURNS.

(a) *By Taxpayer.*—Every person liable to any tax imposed by this title or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

SEC. 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276—

(a) *General Rule.*—The amount of income taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

SEC. 276. SAME—EXCEPTIONS.

(a) *False Return or No Return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

SEC. 291. FAILURE TO FILE RETURN.

In case of any failure to make and file a return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, 25 per centum of the tax shall be added to the tax, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3176 of the Revised Statutes, as amended.[1]

SEC. 351. SURTAX ON PERSONAL HOLDING COMPANIES.

* * * * *

(b) *Definitions.*—As used in this title—

(1) The term "personal holding company" means any corporation (other than a corporation exempt from taxation under section 101, and other than a bank or trust company incorporated under the laws of the United States or of any State or Territory, a substantial part of whose business is the receipt of deposits, and other than a life-insurance company or surety company)

[1] The computation of the percentage of penalty under this action was changed in a manner not material in the instant case by Section 406 of the Revenue Act of 1935, c. 829, 49 Stat. 1014.

if—(A) at least 80 per centum of its gross income for the taxable year is derived from royalties, dividends, interest, annuities, and (except in the case of regular dealers in stock or securities) gains from the sale of stock or securities, and (B) at any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals. For the purpose of determining the ownership of stock in a personal holding company—(C) stock owned, directly or indirectly, by a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries; (D) an individual shall be considered as owning, to the exclusion of any other individual, the stock owned, directly or indirectly, by his family, and this rule shall be applied in such manner as to produce the smallest possible number of individuals owning, directly or indirectly, more than 50 per centum in value of the outstanding stock; and (E) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

* * * * *

(c) *Administrative Provisions.*—All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

Treasury Regulations 86, promulgated under the Revenue Act of 1934:

> ART. 291-1. *Addition to the tax in case of failure to file return.*—In case of failure to make and file a return required by Title I within the prescribed time, 25 percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. Two classes of delinquents are subject to this addition to the tax:
>
> (*a*) Those who do not file returns and for whom returns are made by a collector or the Commissioner, and
>
> (*b*) Those who file tardy returns and are unable to show reasonable cause for the delay.
>
> A taxpayer who files a tardy return and wishes to avoid the addition to the tax must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of an affidavit which should be attached to the return. If such an affidavit is furnished with the return or upon the collector's demand, the collector, unless otherwise directed by the Commissioner, will forward the affidavit with the return, and, if the Commissioner determines that the delinquency was due to a reasonable cause and not to willful neglect, the 25 percent addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return in the prescribed

time, then the delay is due to reasonable cause.

If the 25 percent addition to the tax for delinquency in filing the return has been added, the amount so added shall be collected in the same manner as the tax.[2]

* * * * *

ART. 351-1. *Surtax on personal holding companies.*—Section 351 of Title IA imposes an additional graduated income tax or surtax upon corporations classified as personal holding companies. Corporations so classified are exempt from the surtax on corporations improperly accumulating surplus imposed by section 102 of Title I, but are not exempt from the other taxes imposed by that title. Unlike the surtax imposed by section 102, the surtax imposed by section 351 applies to all personal holding companies defined as such in article 351-2 regardless of whether or not they were formed or availed of to accumulate gains and profits for the purpose of avoiding surtax upon shareholders.

ART. 351-8. *Return and payment of tax.*—A separate return is required for the surtax imposed under section 351. Such return shall be made on Form 1120 H. In the case of a personal holding company which is a domestic corporation, the return is required to be made within the time prescribed in section 53 and in the case of a foreign corporation within the time prescribed in section 235. The tax shown by

[2] To accord with Section 405 of the Revenue Act of 1935, this article was amended in a manner not here material by T. D. 4626, XV-1 Cum. Bull. 61, 76-77 (1936).

the corporation on its return must be paid in the case of a domestic corporation within the time prescribed in section 56 and in the case of a foreign corporation within the time prescribed in section 236. The same provisions of law relating to the period of limitation for assessment and collection which govern the taxes imposed by Title I also apply to the surtax imposed under Title IA. However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitation for assessment of the surtax imposed under Title IA. If the corporation subject to section 351 fails to make a return, the tax may be assessed at any time. If the Commissioner finds a deficiency in respect of the tax imposed by section 351, he is required to follow the same procedure which applies to deficiencies in income tax under Title I. The penalties applicable to the income taxes imposed under Title I, as well as the provisions of Title I relating to interest and additions to the tax, also apply to the surtax imposed by section 351. The administrative provisions applicable to the surtax imposed by section 351 are not confined to those contained in Title I but embrace all administrative provisions of law which have any application to income taxes.

The corresponding sections of the Revenue Act of 1936, c. 690, 49 Stat. 1648, are identical except Section 291, which provides that the penalty may be lifted by a showing that the failure to file a return on time was due to reasonable cause and

not to willful neglect; and that this showing may be made even though no tardy return has been filed. Treasury Regulations 94, promulgated under the Revenue Act of 1936, Article 291-1 (as amended by T. D. 5058, 1941-2 Cum. Bull. 156) made the same change. The remaining corresponding articles of Treasury Regulations 94 are identical with those of Regulations 86 set out above.

U. S. GOVERNMENT PRINTING OFFICE: 1943

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 115

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

LANE-WELLS COMPANY, A CORPORATION, AND TECHNICRAFT ENGINEERING CORPORATION

ON ~~PETITION FOR A~~ WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 47–85) is reported at 43 B. T. A. 463. The original opinion of the Circuit Court of Appeals was withdrawn and does not appear in the record. The opinion of the Circuit Court of Appeals on petition for rehearing (R. 277–283) is reported at 134 F. 2d 977.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 10, 1943 (R. 276–277). A

petition for rehearing was denied March 22, 1943 (R. 277). The petition for writ of certiorari was filed on June 22, 1943 and granted October 11, 1943. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The taxpayer[1] filed corporate income tax returns on Form 1120 but did not file personal holding company returns on Form 1120H as specifically required by Treasury Regulations under statutory authority. The question presented is whether there was a "failure" to file a "return" within the meaning of Sections 276 (a) and 291 of the Revenue Acts of 1934 and 1936, and Section 406 of the Revenue Act of 1935, with the consequence that an assessment for personal holding company tax might be made at any time, and a 25% penalty was incurred.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved will be found in the Appendix, *infra*, pp. 18–22.

STATEMENT

The Lane-Wells Company, a Delaware corporation, was organized in 1937 to take over the business of Technicraft Engineering Corporation and its affiliated companies. In 1937, following a re-

[1] Technicraft Engineering Corporation is the taxpayer. The Lane-Wells Company is liable as transferee.

organization in which Lane-Wells Company, of Delaware, acquired the stock of the Technicraft Corporation, the latter conveyed all its assets to the Delaware corporation and was dissolved. (R. 60–63.) It has been stipulated that Lane-Wells Company is liable as transferee for any taxes found due from the Technicraft Corporation (R. 65).

For the years 1934, 1935, and 1936 Technicraft Corporation timely filed the usual corporation income tax returns on Form 1120 (R. 63). It did not file personal holding company surtax returns on Form 1120H for any of those years (R. 64).

Technicraft's 1934 corporate return showed gross income from royalties of $27,125.23, deductions of $11,392.24, and net income of $15,732.99. Its 1935 return showed "gross profits where inventories are not an income determining factor" of $69,577.19, a discount of $13.90, a gross income of $69,591.09, and after deductions a net income of $48,028.20. Its 1936 return showed a gross income of $148,527.82, consisting of $822.01 interest, $2,500 rents, and $145,113.73 royalties, less a discount of $92.08, and after deductions a net income of $111,460.51. In these returns it stated its business variously as "engineering business," "engineering development," and "research and engineering". (R. 63–64.)

The Commissioner determined that the Technicraft Corporation was a personal holding com-

pany in the years in question (deriving more than 80% of its income from royalties) and asserted deficiencies accordingly, by notice dated June 1, 1939 (R. 32–45, 79). A corresponding notice of liability, of the same date, was given the Lane-Wells Company, as transferee (R. 16–20). The deficiency notice was within three years of the filing of the corporate return, on Form 1120, for the year 1936, but not within three years of the similar returns for the years 1935 and 1934 (R. 63, 278). The notice of liability given the Lane-Wells Company as transferee was within four years of the filing of the corporate return for 1935, but not of the return for 1934 (R. 63, 280).

Upon petitions by both respondents (R. 7–20, 24–45), the Board of Tax Appeals held that Technicraft was a personal holding company (R. 65–72), a matter not in controversy here, and that the deficiency notice was timely, as to the disputed years of 1934 and 1935, because failure to file the personal holding company surtax returns rendered inapplicable the requirement that assessment be made within three years after the return is filed (R. 78–84). The Board further upheld, as to each of the three years, the imposition of a 25% penalty for failure to file the personal holding company return (R. 84–85).

Upon consolidated appeals by both respondents (R. 262–264), the court below sustained the Board in its decision that the Technicraft Corporation

was a personal holding company (R. 281) but reversed its decision as to the timeliness of the deficiency notice, as to the years 1934 and 1935, and the imposition of the penalty as to each of the three years (R. 277–283).[2]

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the filing of corporate income tax returns on Form 1120 was sufficient to start the running of the period of limitations against assessment of personal holding company surtax.

(2) In holding that the filing of such returns prevented the imposition of the statutory penalty for failure to file personal holding company surtax returns on Form 1120H.

(3) In failing to give effect to the fact that the filing of returns on Form 1120H was specifically required.

(4) In failing to affirm the decision of the Board of Tax Appeals.

SUMMARY OF ARGUMENT

For our argument with respect to the penalty the Court is respectfully referred to our brief in

[2] However, despite the holding that the deficiency notice for 1935 against Technicraft was untimely, the court below gave effect to the additional year allowed for proceeding against transferees and held the Lane-Wells Company liable for this year (R. 280–281).

R. Simpson & Co. v. *Commissioner,* No. 1, October Term, 1943.

Section 351 (c) of Title IA of the Revenue Acts of 1934 and 1936 provides that *all* administrative provisions of law applicable to taxes imposed under Title I of the Acts be read into Title IA of the Acts and applied to the taxes imposed by that Title. Section 276 of Title I is an administrative provision and when read into Title IA, provides that in case of failure to file a return, *the* tax (i. e., the tax imposed by Title IA) may be assessed at any time. Taken in its proper context the return referred to can mean only the return of the tax imposed by Title IA. That tax is required to be returned separate and apart from any tax imposed by Title I. Therefore it is clear that if the particular return required by Treasury Regulations 86 and 94, Article 351–8, is not filed by a personal holding company, personal holding company surtaxes may be assessed without time limitation.

Nothing said in *Germantown Trust Co.* v. *Commissioner,* 309 U. S. 304, requires a different conclusion, for that was a case where the required information was filed on the wrong form and the taxpayer in that case was not required to file two returns. Here the Treasury Regulations required two returns, one for each tax, and the statute of limitations applies to each return separately. Accordingly the filing of only one return does not

start the running of the period of limitations as to assessment of both taxes.

In any event, the return which was filed did not contain all the information necessary to disclose a liability for the personal holding company tax. Accordingly, if it is ever appropriate to excuse the failure to file the holding company return on the ground that the return actually filed made a sufficient disclosure, the situation here would not warrant it.

ARGUMENT

Taxpayer's failure to file personal holding company returns prevented the running of the statute of limitations upon assessment and subjected taxpayer to penalties

The taxpayer is a "personal holding company," within the meaning of Section 351 of Title IA of the Revenue Acts of 1934 and 1936, but it filed no personal holding company returns for 1934, 1935, and 1936, the years here involved. However, it did file the ordinary income tax returns. Section 275 (a) of both Acts (Appendix, *infra*, p. 18) provides that the income taxes imposed by Title I shall be assessed within three years after the return is filed; Section 276 (a) of both Acts (Appendix, *infra*, pp. 18–19) provides that in case of a "failure to file a return," the tax may be assessed at any time. Section 291 of both Acts, and Section 406 of the Revenue Act of 1935 (Appendix, *infra*, pp. 19, 20), provide penalties for failure to file the

return required by Title I. Each of these sections, by virtue of Section 351 (c) of the Revenue Acts of 1934 and 1936, is made applicable to the personal holding company tax imposed by Title IA. The deficiency and liability notices for the years 1934, 1935, and 1936, related to the Title IA tax and were dated June 1, 1939 (R. 16, 32). It is our position, contrary to the decision of the court below, that the deficiency notice was timely as to Technicraft for the years 1934 and 1935; that the liability notice was timely as to the Lane-Wells Company, as transferee, for the year 1934; and that a twenty-five percent penalty was properly asserted as to each of the years 1934, 1935, and 1936.

A full presentation of our views concerning liability for the statutory penalty for failure to file a personal holding company return, on Form 1120H, is contained in our brief in *R. Simpson & Co. v. Commissioner,* No. 1, this Term. The petitioner in that case relied upon a conflict with the decision below. Our argument there is fully applicable here with but one exception, which requires brief comment. As pointed out in our *Simpson* brief (pp. 44–46), the penalty for failure to file the personal holding company return was mandatory for the years 1934 and 1935, but for 1936 could be lifted if it were shown that such failure was "due to reasonable cause and not due to wilful neglect." In the instant case the Board of Tax Appeals appears to have mistakenly assumed

that the penalty was mandatory for 1936 as well as the other years (R. 84–85). We think the record would not sustain a finding that the taxpayer here had "reasonable cause" for failing to file the personal holding company return for 1936, and we are not clear that either respondent would desire a remand on this question. However, in view of the fact that the Board does not seem to have expressly decided the point, we do not object, if respondents so request, to a remand to the Board for the limited purpose of reconsidering the imposition of the twenty-five percent penalty for the year 1936 only.

Our discussion in the *Simpson* brief is also pertinent in large part to the question of whether the filing by the taxpayer of the ordinary corporate income- and excess-profits-tax returns, on Form 1120, is sufficient to start the running of the three-year statute of limitations on assessment provided by Section 275 (a). At pages 29–33 of that brief we have examined the legislative background of the personal holding company tax provisions, which were incorporated under Title IA of the Revenue Act of 1934, and we have shown that Congress regarded this as a separate tax, requiring a separate return. We have also pointed out that the regulations explicitly require the filing of a separate return, on Form 1120H, for the personal holding company tax, and that until the decision of the circuit court of appeals below, this

requirement had uniformly been sustained by the lower courts. Section 351 (c) (Appendix, *infra*, p. 19) simply requires that the administrative provisions applicable to Title I taxes shall apply equally to the Title IA tax. In addition to Section 54 (a) and Section 62, discussed in the *Simpson* brief, Title I contains Section 275 (a) and Section 276 (a), referred to previously. It is these latter provisions which are involved in this discussion.

Applying Section 275 (a) to Title IA, it is as though it read:

> The amount of personal holding company taxes imposed by this title shall be assessed within three years after the return was filed * * *.

And Section 276 (a) is as though it explicitly provided:

> In the case of * * * a failure to file a personal holding company return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

In applying the law in regard to the period of limitation upon assessment to the taxes imposed by Title IA, the Commissioner adopted the precise formulae that are dictated by the statute. His regulations in this respect are merely a clarifying statement of the law. They read (Appendix, *infra*, pp. 21–22):

> The same provisions of law relating to the period of limitation for assessment and collection which govern the taxes imposed by Title I also apply to the surtax imposed under Title IA. However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitation for assessment of the surtax imposed under Title IA. If the corporation subject to section 351 fails to make a return, the tax may be assessed at any time. * * * [Regulations 86 and 94, Article 351–8.]

In the present case the taxpayer was required to file an income- and excess-profits-tax return on Form 1120 and did so. The period of limitations for assessment of that tax started running from the date of the filing of the return applicable to that tax. But the taxpayer failed to file the additional return of the tax imposed by Title IA, on Form 1120H.

In view of the care taken by Congress to impose a separate and distinct tax upon personal holding companies and of the Commissioner's authoritative requirement for a separate and additional return, it would be an anomaly if the principles announced by the lower court in regard to the period of limitations against assessments are to be adhered to. Under the Ninth Circuit's interpretation of the statute the filing of a return for Title

I taxes would suffice in many cases, such as here, to bar the collection of the unreported personal holding company surtax. The burden of reporting tax liability is upon the taxpayer and should not be shifted to the Commissioner in the case of personal holding companies any more than in the case of an individual taxpayer. The holding that a corporate income-tax return is sufficient to start the period of limitations running and to avoid the penalty places a premium upon failure to file the required surtax return.

Taxpayers may thus ignore with impunity the requirement for filing personal holding company returns. If the Commissioner should ascertain the liability in time to make the assessment, delinquent taxpayers will have lost nothing by a failure to file Form 1120H. On the other hand, the delay caused by their failure may well result in postponing the ascertainment by the Commissioner until after the collection of the unreported tax is barred. Thus a statute designed to place a limit upon the assessment of additional amounts only after taxpayers have given notice by their returns that they belong to the taxable class, will become an instrument for avoiding all liability.

In cases of corporations which are taxable only under Title I no such premium exists. If no return of the tax imposed by that title is filed, the corporation may be assessed at any time. Not only will it be liable for the tax which it right-

fully owes, but also for the penalty for failure to report it. On the other hand, the personal holding company is declared by the Ninth Circuit to be protected by the operation of the statute of limitations and immune from the penalty provisions, so long as it fulfills its duty in regard to the return of its ordinary corporate taxes. No such chance of immunity from tax has been granted any other type of taxpayer and we respectfully submit that Congress has granted no such opportunity to personal holding companies. Section 351 clearly dictates that not only the penalty provisions of Title I taxes shall apply specifically to Title IA taxes, but that *all* provisions of law which apply to Title I taxes shall also apply to Title IA taxes.

The court below based its conclusion upon the decision of this Court in *Germantown Trust Co.* v. *Commissioner,* 309 U. S. 304, which is discussed in our *Simpson* brief (pp. 38, 40–43). We believe the situation here is not comparable to the *Germantown* case. There the taxpayer was liable for but one tax. By mistake it used the wrong form, but the tax could be computed from that form. In the instant case the taxpayer was liable for two distinct taxes. It filed a return for one tax but wholly failed to file the required return for the second tax. The return which it did file, on Form 1120, did not disclose that it was a personal holding company or permit of an accurate computation of that tax.

Under similar circumstances in which the "return" filed did not contain the data from which the tax might be computed, this Court has held that only a return which supplied the information in the prescribed manner would start the running of the period of limitations. *Florsheim Bros. Co. v. United States*, 280 U. S. 453. In that case a tentative return showing an estimate of taxes due was authorized by the Commissioner and filed by the taxpayer. It was nevertheless held to be no return, the Court saying (p. 460):

> The burden of supplying by the return the information on which assessments were to be based was thus imposed upon the taxpayer. And, in providing that the period of limitation should begin on the date when the return was filed, rather than when it was due, the statute plainly manifested a purpose that the period was to commence only when the taxpayer had supplied this information in the prescribed manner.

The decisive fact is that in order to secure the information necessary for the imposition of the second tax, the personal holding company tax, the Commissioner required each person meeting the statutory conditions to file a second return. It is true that he might have required that the additional information necessary to the imposition of the second tax should be added to the income-tax return, but by virtue of the statute the choice was for the Commissioner to make, and since he did

not require that all the information be reported in a single return, taxpayers are not at liberty to report the information in that manner and ignore the requirement that a separate return be filed. The period of limitations was presumably selected in anticipation of the orderly receipt of the information by the Commissioner, and upon the assumption that taxpayers would comply with the regulations.

Form 1120 did not call for the same information as did Form 1120H. For instance, the latter form called for a statement of stock ownership during the last half of the taxable year;[3] for contributions or gifts not deducted in computing Title I net income; for income tax paid to a foreign country or a United States possession not deducted in computing Title I net income; for dividends from personal holding companies; and for amounts used or set aside to retire indebtedness (the credit allowed by Section 351 (b) (2) (B) of

[3] Taxpayer's return for 1934 (R. 189, 190–193) gave no indication whatever that at least 50% in value of the outstanding stock was owned by five (or less) individuals. The return filed for 1935 (R. 197, 198–202) showed merely the number of common shares owned by two officers of the company, but the return did not state the number of shares outstanding. Nor did the 1935 return in any way indicate that at least 80% of gross income was derived from royalties, dividends, interest, annuities, or gain from the sale of stocks or securities. The 1936 return (R. 205, 206–212), although listing income as from royalties, again gave no indication of stock ownership beyond the fact that the same two officers owned specified amounts of preferred stock.

Title IA was not the same as the credit provided in Section 26 (c) (2) of Title I).[4]

Assuming *arguendo* that sufficient information could be gleaned from Form 1120 to disclose liability for the personal holding company tax and to compute the tax for Form 1120H purposes, it is doubtful that a proper interpretation of the particular statute in question was intended to make the collection of the revenue depend upon such a casual disclosure. It is true in every case that the Commissioner is clothed with sufficient authority to ferret out tax liabilities without the taxpayer's cooperation. But this Court held in the *Florsheim* case, *supra*, (p. 463), that the existence of such authority was without significance. It is equally without significance here, for a positive

[4] The court below stated (R. 278) that the Board had found that the taxpayer's returns "showed all the facts necessary for the respondent [Commissioner] to compute the taxes as a personal holding company obligation [2]." Footnote 2 of the opinion (R. 278) stated that the Board's "finding" was:

> 4. * * * Taxpayer's income and excess profits tax returns filed on Form 1120 made a full disclosure of its gross income and deductions and its resulting net income * * *.

The "finding" so quoted does not appear in the Board's findings of fact or opinion but is taken from the fourth paragraph of the headnotes to the Board's decision (R. 49; 43 B. T. A., at p. 464). It clearly does not support the natural import of the court's statement—i. e., the "finding" does not carry with it the necessary implication that the taxpayer (1) disclosed it was a personal holding company, or (2) furnished information from which the personal holding company tax could be correctly computed.

duty to file an additional return was placed upon the taxpayer and it was given ample notice of that duty by the Form 1120 which it filed (R. 79).

In the light of the explicit language of the statute and the legislative history of Title IA of the Revenue Act of 1934, it seems clear that Article 351-8 of Treasury Regulations 86 and 94 is an accurate and valid statement of the requirements of the statutes in regard to the application of the period of limitations against assessment of personal holding company taxes. In general, what has been said as to the application of the penalty in the *Simpson* brief applies here. In practical effect, the consequence of the decision below will be to bar forever the collection, not only of a penalty, but of a tax itself which the taxpayer, contrary to the plainest mandate, has failed to disclose.

CONCLUSION

The decision of the court is incorrect, and should be reversed.

Respectfully submitted.

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DECEMBER 1943.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 54. RECORDS AND SPECIAL RETURNS.

(a) *By Taxpayer.*—Every person liable to any tax imposed by this title or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

* * * * *

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

* * * * *

SEC. 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276—

(a) *General Rule.*—The amount of income taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * *

SEC. 276. SAME-EXCEPTIONS.

(a) *False Return or No Return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a pro-

ceeding in court for the collection of such tax may be begun without assessment, at any time.

* * * * *

SEC. 291. FAILURE TO FILE RETURN.

In case of any failure to made and file a return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, 25 per centum of the tax shall be added to the tax, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3176 of the Revised Statutes, as amended.[5]

* * * * *

SEC. 351. SURTAX ON PERSONAL HOLDING COMPANIES.

* * * * *

(c) *Administrative Provisions.*—All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section,

[5] The computation of the percentage of penalty under this action was changed in a manner not material in the instant case by Section 406 of the Revenue Act of 1935, c. 829, 49 Stat. 1014.

except that the provisions of section 131 of that title shall not be applicable.

* * * * *

The corresponding sections of the Revenue Act of 1936, c. 690, 49 Stat. 1648, are identical except Section 291, which reads as follows:

SEC. 291. FAILURE TO FILE RETURN.

In case of any failure to make and file return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: 5 per centum if the failure is for not more than thirty days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3176 of the Revised Statutes, as amended.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

ART. 291-1 (as amended by T. D. 5058, 1941-2 Cum. Bull. 156). *Addition to the tax in case of failure to file return.*—In case of failure to make and file a return required by Title I within the prescribed time, a certain percent of the amount of the tax

the tax is added to the tax unless failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate.

A taxpayer who wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of an affidavit which should be filed with the collector, who, unless otherwise directed by the Commissioner, will forward the affidavit to the Commissioner, and, if the Commissioner determines that the delinquency was due to a reasonable cause, and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause.

If the addition to the tax for delinquency in filing the return has been added, the amount so added shall be collected in the same manner as the tax.

* * * * *

ART. 351–8. *Return and payment of tax.*—A separate return is required for the surtax imposed under section 351. Such return shall be made on Form 1120H. In the case of a personal holding company which is a domestic corporation, the return is required to be made within the time prescribed in section 53 and in the case of a foreign corporation within the time pre-

scribed in section 235. The tax shown by the corporation on its return must be paid in the case of a domestic corporation within the time prescribed in section 56 and in the case of a foreign corporation within the time prescribed in section 236. The same provisions of law relating to the period of limitation for assessment and collection which govern the taxes imposed by Title I also apply to the surtax imposed under Title IA. However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitation for assessment of the surtax imposed under Title IA. If the corporation subject to section 351 fails to make a return, the tax may be assessed at any time. If the Commissioner finds a deficiency in respect of the tax imposed by section 351, he is required to follow the same procedure which applies to deficiencies in income tax under Title I. The penalties applicable to the income taxes imposed under Title I, as well as the provisions of Title I relating to interest and additions to the tax, also apply to the surtax imposed by section 351. The administrative provisions applicable to the surtax imposed by section 351 are not confined to those contained in Title I but embrace all administrative provisions of law which have any application to income taxes.

Articles 291–1 and 351–8 of Treasury Regulations 86, promulgated under the Revenue Act of 1934, are identical with the above except that under Article 291–1 the penalty for failure to file the return on time was mandatory.

U. S. GOVERNMENT PRINTING OFFICE: 1943

IN THE

Supreme Court of the United States

October Term, 1943.

No. 115

COMMISSIONER OF INTERNAL REVENUE,

Petitioner

vs.

LANE-WELLS COMPANY, a corporation, and TECHNICRAFT ENGINEERING CORPORATION,

Respondents.

BRIEF FOR THE RESPONDENTS.

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TABLE OF AUTHORITIES CITED.

CASES.

MISCELLANEOUS.

STATUTES.

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BRIEF FOR THE RESPONDENTS.

Opinions Below.

The opinion of the Board of Tax Appeals [R. 47, 85] is reported at 43 B. T. A. 463. The original opinion of the Circuit Court of Appeals was withdrawn and does not appear in the record. The opinion of the Circuit Court of Appeals on petition for rehearing [R. 277, 283] is reported at 134 Fed. (2d) 977.

Jurisdiction.

The judgment of the Circuit Court of Appeals for the Ninth Circuit was entered February 10, 1943 [R. 276-277]. A petition for rehearing was denied March 22, 1943 [R. 277]. The petition for writ of certiorari was filed on June 22, 1943 and granted October 11, 1943. The

petitioner relies upon section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 in support of the Court's jurisdiction.

Statement of the Case.

The statement contained in petitioner's brief appears to be a fair statement of the facts, except that it omits a recitation of some of the findings which are pertinent to an understanding of the instant case. Without reiterating the facts stated by petitioner, we shall supplement the same with the relevant matter that is not contained in petitioner's statement.

The returns of Technicraft Engineering Corporation (hereinafter referred to as Technicraft) for the years 1934, 1935, 1936 and 1937 filed on Form 1120 within the time required by law, contained a full disclosure of its gross income and deductions and resulting net income for those years [R. 49-50]. Technicraft's income tax returns were prepared by its accountant, a certified public accountant, engaged in tax work, who gave Technicraft his opinion that it was not a personal holding company [R. 64]. This accountant had conferences with representatives of the Bureau of Internal Revenue and gave them access to Technicraft's books and records [R. 65]. On June 19, 1937, Technicraft received a refund of $278.37 in respect of income and excess profits taxes paid by it for the year 1935 and at that time the Commissioner made no claim that Technicraft was a personal holding company [R. 65].

Technicraft did not file any returns on Form 1120H because, in good faith, it did not believe it was a personal holding company [R. 79].

Demonstrative of the good faith of Technicraft in believing it was not a personal holding company is the entire record upon which that issue hinged [R. 116-262, inclusive]. It must be noted that the determination of the Board of Tax Appeals that Technicraft was taxable as a personal holding company was not due to a finding that 80% or more of its income was from personal holding company income as defined by the statute, but that Technicraft had failed to make such a segregation or apportionment in its presentation of evidence before the Board as to segregate that which was personal holding company income from that which was not personal holding company income [R. 68, 70, 283]. It was the failure of the Circuit Court of Appeals to remand the case back to the Board to permit respondents to present such evidence that would have shown that over 20% of the taxed income was not "royalty" income, that was responsible for respondents seeking a petition for writ of certiorari herein. Respondents' petition for a writ of certiorari was denied. Had the opportunity to present the evidence been given to the respondents, it would have disclosed that far less than 80% of its taxed income was personal holding company income. This is important here because it makes it obvious that Technicraft had a right to believe, in good faith, that it was not a personal holding company.

Argument.

The returns filed by the taxpayer in this case were sufficient to start the running of the statute of limitations and to avoid the imposition of penalties. In his brief, the petitioner refers to his brief in *R. Simpson & Co., Inc. v. Commissioner of Internal Revenue*, No. 1, this Term. Petitioner asserts therein that it was Congressional intent that the personal holding company tax constitute a "wholly separate tax" from the income taxes provided by Title I (Commissioner's Brief. *Simpson* case, p. 32.) A survey of the legislative history fails to sustain this conclusion. All of the quotations cited by the petitioner and gleaned from Committee Reports are consistent with the theory that Section 351 of the Revenue Act of 1934 constituted a *surtax* or an *additional income tax*. The Congressional commentary as well as the Act itself is entirely inconsistent with treatment of section 351 as a wholly *independent* tax.

As originally submitted by the House Ways and Means Committee, the heading of section 351 read as follows: "Tax on Personal Holding Companies." This heading was revised by the Senate Finance Committee and, when enacted, read: "Surtax on Personal Holding Companies."

> *Seidman's Legislative History of Federal Income Tax Law*, 1938-1861, p. 394.

The distinctiveness of the description as a "Tax" was shunned by the Congress in favor of the description "Surtax," which *eo nomine* suggests interdependence upon another or primary tax. As originally submitted by the House Ways and Means Committee, subdivision (a) of section 351 referred to the personal holding company tax liability as a "Tax." This designation was reformed,

however, by the Senate Finance Committee and when finally enacted such tax liability was referred to as a "Surtax." (*Seidman's Legislative History, etc.*, p. 394.) Whether section 351 was to be a wholly "separate" tax as contended by the petitioner, or whether it was to be an "additional or surtax" as we contend, is made plain by the report of the Senate Finance Committee, 73rd Congress, 2nd Session, S. Rept. 558, in the following language:

> "In view of this situation, your Committee has rewritten the section[1] dealing with personal holding companies and has placed it in Title I(a), section 351 and *it has been made plain that this is an additional graduated income tax, or surtax, on personal holding companies.*" (Italics ours.)

Respondent assumes that because paragraph (c) of section 351 makes applicable to Title IA the administrative provisions of Title I, that such paragraph has the inferential effect of providing for a separate return to be filed by personal holding companies. We cannot agree with this conclusion.

The fallaciousness of respondents' theory is revealed by an examination of other portions of the Revenue Act of 1934 and subsequent acts. From such examination it becomes evident that Congress could not have contemplated that paragraph (c) of section 351 would have the effect of requiring a separate return.

It will be noted that paragraph (b) of section 702 of the *same* Revenue Act of 1934 respecting capital stock

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[1]Section 102 of the Revenue Act of 1934.

taxes (Title V) is in words *identical* to paragraph (c) of section 351. Yet, paragraph (d) of section 701 specifically reads as follows:

> "(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed, to the Collector for the District in which is located its principal place of business, or, if it has no principal place of business in the United States then to the Collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe * * *."

By the same token, the Revenue Act of 1936 in providing for a tax on unjust enrichments (Title III) contains a provision practically identical with paragraph (c) of section 351. Paragraph (a) of section 503 of the Revenue Act of 1936, in almost identical language to paragraph (c) of section 351, makes applicable with respect to the taxes imposed by Title III, the provisions of law applicable to Title I. That this provision was not intended to be a substitute for a provision requiring the filing of a separate return is evident from paragraph (b) of section 503 of the Act of 1936, which requires every person subject to tax under Title III to "make a return under this Title, which return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, shall prescribe."

In the case of *United States v. Atchison, T. & S. F. R. Co.*, 220 U. S. 37, 31 S. Ct. 362, 55 L. ed. 361, this Court said:

> "The presence of such a provision in the one part and its absence in the other is an argument against reading it as implied."

It is noted that the Conference Report (House Finance Report, 1385, 73rd Congress, 2nd Session, p. 20) recites that "the Senate amendment provides for a separate return for the purpose of this surtax on personal holding companies. All provisions of law in respect to the taxes imposed by Title I are applicable to this return except that the foreign-tax credit imposed by section 131 is not allowed." The fact that the Act, as enacted, did not contain a specific provision for a separate return, necessarily points to the conclusion that any such provision which was contained in the Senate amendment was purposely stricken prior to the enactment of section 351.

The very fact that Congress made the provisions of Title I applicable to Title IA is in itself indicative of the fact that Congress did not intend to isolate Title IA from Title I. The heading "Additional Income Taxes" reveals an intent to supplement by addition rather than to create a category of distinctiveness. The use of the word "surtax" rather than "tax" reveals an intent to create a supplementary or additional tax rather than an independent and separate tax. The selection of the letter "A" to be added to Title I thus naming the new chapter

Title IA rather than the use of a separate and wholly integral number such as VII or VIII for the new tax, reveals an intention to create an interrelationship with Title I other than the wholly separateness that the Commissioner now seeks to read into the section.

Section 351 is in effect merely another *surtax* on corporation income. It is sister to Section 102 of the Revenue Act of 1934 (Title I) governing surtax on the income of corporations improperly accumulating surplus. Thus paragraph (e) of Section 102 provides: "For surtax on personal holding companies, see section 351."

Similarly, paragraph (e) of Section 351 provides: "For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see section 102."

Both section 102 under Title I and section 351 under Title IA refer to surtax on corporations. The object of both sections was to avoid the withholding by corporations of distribution of earnings to their stockholders and thereby avoid the payment by stockholders of taxes on earnings that would otherwise be distributed to such stockholders. Section 102 is designed to cover both holding companies and other corporations. Section 351 was merely designed to make conclusive instead of *prima facie*, evidence that a company was a holding company, by the legal effect given to certain definitions involving stockholdings and nature of earnings.

Report—Ways and Means Committee (73d Cong., 2d Sess., H. Rept. 704):

> "Your committee therefore recommends that the present section 104 be divided into two parts, one dealing with the personal holding company and the other with all other corporations which accumulate

unreasonable surpluses. The part dealing with personal holding companies is new, while the present law has been retained with a few modifications to reach the other companies. (See secs. 102 and 103 of the bill.)"

Report—Senate Finance Committee (73d Cong., 2d Sess., S. Rept. 558):

"The effect of this system is to provide for a tax which will be automatically levied upon the holding company without any necessity for proving a purpose of avoiding surtaxes. It is believed that the majority of these corporations are in fact formed for the sole purpose of avoiding the imposition of the surtax upon the stockholders.

"The fact that some companies, such as real estate companies, have been placed outside the scope of this provision does not result in a serious opportunity for tax avoidance. Such companies, and, in fact, all other corporations, are still subject to section 102 of the bill. That section is similar to section 104 of existing law and applies a surtax to any corporation formed or availed of for the purpose of preventing imposition of surtaxes upon its shareholders. * * *"

Subdivision (d) of Section 102 under Title I is verbatim the same as subdivision (d) of Section 351 under Title IA. This is another circumstance to indicate that the same type of surtax was involved as is provided under Title I.

Wholly inconsistent with the theory that Title IA is wholly separate and independent of Title I, is the repeated cross-references in Title IA to provisions contained in Title I. Thus Section 351 refers to Sections 13, 204, 115, 23(o), 117(d), 131, and 102, all contained in Title I.

The only logical conclusion to be drawn from these facts is that the division into separate titles was simply a design for ready reference to the provision rather than intentional creation of a new category of taxation. This Honorable Court was confronted with a somewhat similar situation in the case of *Ozawa v. United States*, 260 U. S. 178, 43 S. Ct. 65, 67 L. ed. 199. There as here an unintended significance was sought to be attached to a statute which was placed by Congress in a title apart from other sections bearing upon the same subject matter. There, as here, the statute referred to "this title." This Court said:

> "The division of the Revised Statutes into titles and chapters is chiefly a matter of convenience, and reference to a given title or chapter is simply a ready method of identifying the particular provisions which are meant."

Were there any doubt, then such doubt is erased by the comments of Congressional Committees referring to the tax as a surtax and as an additional tax and not as a wholly separate tax. That the use of the word "surtax" was intentional and advised is without doubt, after considering that when originally submitted by the House Ways and Means Committee the word used was "tax", and subsequently abandoned in favor of the use of the word "surtax." The Commissioner's attempt to strain the natural meaning of the language of the Act and the legislative commentaries bespeaks of ingenuity but not of logic. It is a plain case of an attempt by the Commissioner and the Secretary of the Treasury to legislate for purposes of convenience beyond the limitations of regulations permitted. The Commissioner and the Secretary could have easily prescribed, instead of the requirement of a separate

return, the adding of two or three questions to the regular corporate income tax return, which would have been adequate to disclose all the information needed by the Commissioner to enforce the provisions of section 351.[2]

To further illustrate how illogical the contention of the Commissioner is that a separate return was necessary: it cannot logically be contended that a corporation coming within the provisions of section 102 would be subject to a penalty and also be disentitled to take advantage of the statute of limitations under Title I if the Commissioner had provided for a separate return for corporations embraced by section 102 notwithstanding the filing of a regular return of the corporation containing the information upon which the tax under section 102 could be computed. The Commissioner cannot adopt regulations which are in effect legislation. In the case of *Credit Alliance v. Helvering,* 316 U. S. 107, 86 L. Ed. 1307, 62 S. Ct. 989, this Court held that the regulation of the Commissioner in that case in fact constituted legislation on a matter which was reserved to Congress. Just as the information under section 351 could have been secured by a few additional questions to Form 1120, so the same information could be secured pertaining to section 102 on the one regular form. No separate return was required by the Commissioner under section 102. If the Commissioner had

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[2]Form 1120 contains the question: "Is the corporation a personal holding company within the meaning of section 351 of the Revenue Act of 1934?" Two other or further questions could have provided all information needed, such as (1) Is 50% or more of the stock owned by five or less persons? (2) Was 80% or more of the income of this corporation derived from royalties, dividends, interest, annuities and (except in cases of regular dealers in stock or securities) gains from the sale of stock or securities?

required a separate return and the taxpayer in good faith had not filed such a separate return, but had merely filed a regular return under Form 1120, the situation would be no different than the one in *Germantown Trust Co. v. Comm.*, 309 U. S. 304, where the taxpayer filed a fiduciary return instead of filing a corporate return.

Where a corporate taxpayer, in good faith, files a return on Form 1120 but for reasonable cause does not file a personal holding company return, can it be said that there was a "failure to file a return" within the meaning of sections 276(a) and 291 of the Revenue Acts of 1934 and 1936? The information called for by Form 1120H is information that could have been called for by Form 1120. The means of determining tax liability under Title IA was by section 351(c) shifted to such returns as were required under Title I. Can it therefore be said that a return required by Title I which would disclose income tax liability under Title IA and which is filed on the wrong form of return (in absolute good faith and for reasonable cause) is a failure to file a return within the meaning of Sections 276(a) and 291 of the Revenue Acts of 1934 and 1936? The answer has been heretofore expressed by the United States Supreme Court in *Germantown Trust Company v. Commissioner*, 309 U. S. 304, which the Commissioner now ineffectively seeks to distinguish. In the Germantown case a fiduciary filed a return on Form 1041 instead of Form 1120 designed by the Treasury Department for associations taxable as corporations. The Commissioner contended that the filing of Form 1041 did not set the statute of limitations in operation. The Circuit Court of Appeals for the Third Circuit upheld the Commissioner's contention, which was similar to his

contention in this case to the effect that the filing of a wrong form of prescribed return was not sufficient to start the operation of the statute of limitations. On February 26, 1940, this court reversed the judgment of the Circuit Court of Appeals. The Court construed sections 275 and 276 of the Revenue Act of 1932 (not changed in the Revenue Act of 1934 ,which is applicable herein) in the light of the meaning of section 1002(a) of the Revenue Act of 1926 as amended by section 579 of the Revenue Act of 1934, which governs the jurisdiction of a Circuit Court of Appeals to review a decision of the Board of Tax Appeals. Section 1002(a) as amended, reads as follows:

> "Except as provided in subdivision (b), such decision may be reviewed by the Circuit Court of Appeals for the Circuit in which is located the Collector's office to which was made the return of tax in respect of which the liability arises, or, if no return was made, then by the Court of Appeals of the District of Columbia."

It was the decision of this court in the *Germantown* case that a return which is sufficient to invoke the jurisdiction of the Circuit Court of Appeals, is a return within the meaning of section 276(a), providing that there shall be no period of limitations in the event no return is filed. To properly distinguish the *Germantown* case from the instant case, the Commissioner must direct his argument to the inapplicability of the reasoning in the *Germantown* case to the facts of the instant case. This he has not done. We respectfully submit that he cannot do this. In respondent's petitions to the United States Circuit Court of Appeals, for the Ninth Circuit, for a review of the decision of the Board of Tax Appeals, the taxpayer recited: "The tax-

payer filed income tax returns for the taxable years 1934, 1935, 1936 and 1937, with the Collector of Internal Revenue for the Sixth Collection District of the State of California, whose office is located within the Ninth Judicial Circuit wherein the taxpayer did reside." [R. 107. See also petition of taxpayer's transferee, R. 96.] The recital of the foregoing jurisdictional fact was to invoke the jurisdiction of the Ninth Circuit Court of Appeals. It will be noted that the Commissioner did not deny the fact that the filing of these returns was sufficient to vest the Circuit Court of Appeals for the Ninth Circuit with jurisdiction to review the decision of the United States Board of Tax Appeals. In fact, in a separate petition for review (later dismissed) the Commissioner himself invoked the jurisdiction of the Ninth Circuit Court of Appeals to review the same decision of the Board of Tax Appeals thereby recognizing the effectiveness of these returns as sufficient to vest the Circuit Court of Appeals for the Ninth Circuit with jurisdiction. No contention is being made herein that the returns were not sufficient under section 1002(a) of the Revenue Act of 1926 as amended by section 519 of the Revenue Act of 1934 to empower the Circuit Court of Appeals for the Ninth Circuit to entertain a review because the "return of the tax in respect to which the liability arises" was made in the "Circuit in which is located the collector's office to which was made the return of the tax." The determining factors thereupon correspond on all fours with the principles involved in the *Germantown* case. This Court, speaking through Mr. Justice Roberts said:

> "We are of the opinion that if the return filed by the petitioner was such as to create venue of the proceedings for review in the court below, it was also

a return under the terms of section 275(a), so that the two year period of limitations imposed by that section is applicable."

Petitioners contend that the *Germantown* case is distinguishable because the court therein recited that the fiduciary form filed by the taxpayer in that case on Form 1041 instead of Form 1120 was nevertheless sufficient because it "contained all of the data from which a tax could be computed and assessed, although it did not purport to state any amount due as tax" (Commisisoner's Brief in *Simpson* case, p. 38. See also Petitioner's Brief, pp. 13 to 17). The Commissioner contends that the instant case presents a situation different from that of the *Germantown* case, inferring that in the instant case the Form 1120H did not contain "all of the data from which a tax could be computed and assessed." It is appropriate first to examine the difference between Forms 1120 and 1041, which were involved in the *Germantown* case. Form 1120, which was not filed in that case called for information not called for by Form 1041, and the omissions of such information are far more substantial than any omissions that might be attributable to failure of a corporation filing Form 1120 and failing to file Form 1120H. By filing Form 1041 in lieu of Form 1120 in the *Germantown* case the taxpayer there gave no information concerning the value of capital stock declared for purposes of capital stock tax, the net income from excess profits tax computation, the information required with respect to date of incorporation, location of the corporation's books, the kind of business the corporation was engaged in, compensation of officers, type of business conducted, history of affiliation with other corporations, and other information par-

ticularly identified with corporations. Nevertheless even though Form 1041 was not designed for corporations and did not disclose the information upon which it could be determined that the taxpayer was a corporation or taxable as a corporation, *it contained sufficient information from which the tax could be computed.* Having been filed in good faith this Court held that it was a return within the meaning of section 276(a) sufficient to start the running of the statute of limitations.

In the instant case, it cannot be said as inferred by the Commissioner, that the returns of the taxpayer did not contain all of the data from which a tax could be computed and assessed. The finding of the Board of Tax Appeals, unchallenged by the Commissioner was that the returns fully reported gross income and total deductions. It was undisputed that the taxpayer filed returns on Form 1120 for the calendar years involved, which were full and complete aside from such minor adjustments by the Commissioner made in his determination of the deficiency [R. 78, 79]. The Commissioner argues that the failure to file Form 1120H was the cause of the Commissioner not having information from which he could determine that a personal holding company was involved. This is different from the information which would enable him to compute the tax. It should be noted that in the *Germantown* case the return filed was sufficient to enable the Commissioner to compute the tax although obviously it was not sufficient to enable the Commissioner to determine that an association taxable as a corporation was involved. In this case both the Board and the Circuit Court definitely found that the return as filed contained all of the information necessary for the computation of the tax except the mere

matter of mathematical computation by applying the rates to the income reported on the return already filed [R. 278]. Here again the Commissioner's attempt to distinguish the *Germantown* case is ineffectual.

As this Court stated in *Zellerbach Paper Co v. Helvering*, 293 U. S. 172, 79 L. Ed. 264, 55 S. Ct. 127:

> "Perfect accuracy or completeness is not necessary to rescue a return from nullity, and if it purports to be a return, is sworn to as such * * * and evinces an honest and genuine endeavor to satisfy the law. This is so though at the time of filing the omissions or inaccuracies are such as to make amendment necessary."

The Commissioner, however, contends that the return which Technicraft filed on Form 1120, in addition to not disclosing that it was a personal holding company, also did not "*permit of an accurate* computation of that tax" (Petitioner's Brief, p. 13). The use of the word "accurate" by the Honorable Attorney General is a significant admission. It would be impossible for the Commissioner to contend that the returns filed herein did not permit of a computation of the tax. The return had all of the information necessary for the determination of the tax. The only omissions which would affect the amount of tax were omissions of information which would have had the effect of *lowering* the personal holding company tax liability. Thus Form 1120H would have supplied information as to contributions or gifts not deducted in computing Title I net income for income tax paid to a foreign country or United States possession, dividends received from personal holding companies, and amounts used or set aside to retire indebtedness, all of which are deductible.

This information was for the benefit of the taxpayer. The taxpayer had the right not to claim these deductions. The computation of personal holding company taxes is based upon "undistributed adjusted net income." The term "adjusted net income" is defined by section 351(b)(3) as net income computed without allowance of the dividend deduction otherwise allowable, but minus the sum of the deductions heretofore mentioned. Section 351(b)(4) provides that the terms used in the section shall have the same meaning as when used in Title I. It is, therefore, apparent that the computation of the tax is based upon the information contained in Form 1120. The information required to fully compute the tax without deductions to the taxpayer was fully disclosed to the Commissioner by the return [R. 49]. This finding was accepted by the Circuit Court of Appeals, the court stating that the Board had found that the taxpayer's "returns" showed "all the facts necessary for the respondent (Commissioner) to compute the taxes as a personal holding company obligation" [R. 278]. *The attempted challenge of the finding contained in the footnote 4, page 16 of the petitioners' brief is the first attempt of the Commissioner to challenge the finding of the Board.* It is significant that no challenge to the sufficiency of the evidence to support the Board's findings is contained in the specifications of errors to be urged at the hearing before this Court. No such error was assigned to the Circuit Court of Appeals. Petitioners' Brief on page 5 sets forth specifications of errors to be urged in this case without specifications that any finding of the Board of Tax Appeals was unsupported by the evidence. It is elementary that a point not raised by an appellant in the lower courts cannot, for the first time, be raised in this

Court on certiorari. (*Burnet v. Commonwealth Improvement Co.*, 53 S. Ct. 198, 287 U. S. 415, 77 L. Ed. 399.) We note that the Commissioner's unspecified error raised in connection with the statement of the Circuit Court of Appeals is that the finding does not imply that the taxpayer (1) disclosed it was a personal holding company or (2) furnished information from which personal holding company tax could be *correctly* computed. From the rule applied in the *Germantown* case it will be apparent that such return, if filed in good faith, starts the running of the statute of limitations although it did not disclose that taxpayer was a personal holding company. If it furnished information from which the personal holding company tax could be computed, the fact that the computation might not be entirely correct[3] would not have the effect of constituting this as a no return case.

Although this Court in *Florsheim Bros. v. U. S.*, 280 U. S. 453, held that a mere estimate of tax would not constitute a return sufficient to start the statute of limitations running, the Court nevertheless recognized that the *Florsheim* case did not involve the rule that holds that the filing of a return which is defective or incomplete is nevertheless sufficient to start the running of the statute of limitations. In the *Florsheim* case the document filed did not purport to constitute a return, but merely a tentative form for the estimation of a tax. Petitioner refers to the return filed in the *Florsheim* case as having been made under similiar circumstances to the instant case (Petitioner's

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[3]In this case the omitted information was for the benefit of the taxpayer; not for the benefit of the Government—since the enumerated information was for the purpose of providing taxpayer with additional deductions.

Brief, p. 14). A reading of the *Florsheim* case, however, will reveal that the circumstances were not in any way similar to the instant case. Form 1031T filed in that case, was not intended to be a return, but was in compliance with section 239 of the Revenue Act of 1918 wherein provision was made for a tentative return showing an estimate of taxes only.

It will be apparent that the filing of Form 1120 has the effect of supplying the information for the determination of the surtax provided for by section 351 in a far greater manner than the filing of Form 1041 which had the effect of supplying similar information to the determination of a corporate income tax, as held in the *Germantown* case.

That the Commissioner does not squarely meet this problem in his attempt to distinguish the *Germantown* case, is apparent from the following excerpt from page 41 of Commissioner's brief in the *Simpson* case:

> "In the first place the return in that case contained all the data necessary for the assessment of the tax by the Commissioner. In the present case the return which was filed was insufficient to advise the Commissioner that any liability existed for the personal holding company tax."

The petitioner does not say that in the present case the return which was filed did not contain all the data necessary for the assessment of the tax by the Commissioner, or using the words of the Court, the data "from which a tax could be computed and assessed." As we have heretofore stated, to distinguish the *Germantown* case it would be necessary for the petitioner to establish that the return filed in the present case did not contain

data necessary for the computation of the tax by the Commissioner. To assert as a distinguishing feature that the return filed in the present case was insufficient because it did not disclose the existence of a personal holding company liability is to ascribe to the *Germantown* case *ratio decidendi,* which is absent from that decision. This Court was unconcerned in the *Germantown* case that the form therein filed did not disclose the character of the taxpayer as an association taxable as a corporation.

Petitioner seeks also to distinguish the *Germantown* case on the ground that it did not involve the statute imposing penalties for failure to file the prescribed return, but involved only the statute of limitations on making assessments (Commissioner's Brief, *Simpson* case, p. 41). Petitioner, however, does not point out any reason why a return which is sufficient to start the running of the statute of limitations is not sufficient also to avoid penalties. The decision of the Court in the *Germantown* case gave effect to sections 275 and 276 of the Revenue Act in the same manner as the venue provision of section 1002 of the Revenue Act of 1926 as amended. We know of no reason why the same reasoning does not lead to the conclusion that a return for the purposes of sections 1002, 275, 276, and 296, are not identical.

Strenuous argument is made by the Commissioner that the Commissioner's functions would be impeded if the Court in the present case followed its decision in the *Germantown* case. The argument assumes an intentional evasion by the taxpayer for the purpose of deceiving the Commissioner. If this were true, then the Commissioner would have a case of a false or fraudulent return, which would avoid the running of the

statute of limitations. It must be remembered that the instant case presents an innocent taxpayer who, in good faith, chooses an erroneous form of return, which form, nevertheless, supplies all of the information upon which the tax liability can be computed. It is not true that a premium would be placed upon taxpayers choosing the wrong form. If an intentional selection of the wrong form of return is made, this would be a clear case of a fraudulent or false return, thus invoking to the Commissioner the protection afforded by section 276(a). In so far as penalties are concerned, the Commissioner could invoke the even greater penalty of section 293(b) which provides for 50% of the total deficiency where the deficiency is due to fraud with intent to evade the tax.

Nor is the convenience of the Commissioner a reason for writing into the statute something that is not there. In the words of Justice Learned Hand of the Second Circuit dissenting in the case of *O'Sullivan Rubber Co. v. Commissioner*, 120 Fed. (2d) 845:

> "The justification for this section is that Sec. 351(c) makes applicable to the surtax all the administrative provisions of Title I; and since that Title requires a return, so must Title IA. Therefore there must be two returns, as the Commissioner has ruled. I raise no doubt as to the propriety of his ruling; but the statute did not compel it. If he had merely added to the return required by Title I the questions necessary for Title IA it would clearly have been a compliance with section 351(c); and certainly no penalty could have been then imposed. We are imposing one only because he has found it

administratively convenient to make two bites to this particular cherry. The penalty was not meant for that; it was imposed to punish delinquents; those who either deliberately, or from indifference, made no effort at all to pay their taxes; not those who merely misunderstood duties which they tried to discharge. By recourse to what even grammatically is a bit of by no means an inexorable verbal reasoning we are perverting it from that purpose."

The Commissioner will not be hurt by a decision of this Court consistent with its decision in the *Germantown Trust Co.* case. As indicated by Justice Hand, the Commissioner can easily solve his problem by adding to the form of return required by Title I the questions necessary for Title IA. It will not require an act of Congress to accomplish this purpose. But even if such an act were necessary, the Commissioner should not be enabled to avoid the necessity thereof by substituting his regulations for legislation by the Congress.

> *Credit Alliance Co. v. Helvering*, 216 U. S. 107, 86 L. Ed. 1307, 62 S. Ct. 989.

At page 40 of the Government's Brief, in the *Simpson* case, the Commissioner states that with the exception of the decision of the Circuit Court of Appeals in the Ninth Circuit in the present case, it has been uniformly held that a taxpayer who fails to file a personal holding company return on Form 1120H even though a corporation income tax return on Form 1120 has been filed is subject to the prescribed statutory penalties for failure to file a return.

The statement is followed by a citation of the following cases:

Noteman v. Welch, 108 Fed. (2d) 206, C. C. A. 1;

O'Sullivan Rubber Co. v. Commissioner, 120 Fed. (2d) 845, C. C. A. 2;

Lone Pine v. Helvering, 121 Fed. (2d) 935, C. C. A. 2;

Logan Coal etc. v. Helvering, 122 Fed. (2d) 848, C. C. A. 3;

Gerard Investment etc., 122 Fed. (2d) 843, C. C. A. 3;

Porto Rico Coal etc. v. Commissioner, 126 Fed. (2d) 212, C. C. A. 2.

In examining these cases it is interesting to note that the courts therein became involved in considerable difficulty in trying to sustain the result reached. In the case of *O'Sullivan Rubber Co. v. Commissioner, supra*, the Court arrived at the same result as the first Circuit Court of Appeals in *Noteman v. Welch, supra*, but disagreed on reasoning. The Second Circuit Court pointed out that the basis of the decision in *Noteman v. Welch, supra*, was that an incomplete return did not start the statute of limitations running. The Circuit Court of Appeals for the Second Circuit realized that this was error and refused to predicate its decision upon that ground. It therefore engaged itself in the fiction of the separateness of Title I and Title IA in order to uphold the Commissioner's position. This was no easy task, and Justice Learned Hand refused to follow his brothers

on the bench and in a most able dissenting opinion pointed out the error of the majority decision. Justice Hand noted with approval the unanimous decision of the Ninth Circuit in this case. It should be noted also that the Board of Tax Appeals itself was not in agreement in the instant case. The Honorable Van Fosen, a member of the Board, basing a dissenting opinion on his belief that this case is controlled by the decision of the Supreme Court in the *Germantown* case [R. 85].

Petitioner cites *Beam v. Hamilton*, 289 Fed. 9, C. C. A. 6, and a number of cases following that decision (Commission's Brief, *Simpson* case, pp. 43-44). In so far as the Sixth Circuit Court of Appeals in 1923 in the case of *Beam v. Hamilton, supra*, is inconsistent with the decision of this Court in the *Germantown* case, we are not persuaded by its determination on such issues. We note various dissimilarities in fact between the cited case and the instant case, particularly that as in the *Germantown* case the present case involved the filing of a return in a form sufficient from which the tax could be computed, a circumstance which was not present in *Beam v. Hamilton, supra*. Also, in the latter cited case the court specifically points out that the statute as well as the regulations in express and formal terms require separate and distinct returns.

Apparently the Commissioner attempts to persuade this Court to reverse the Circuit Court of Appeals on the penalty issue, even if it does not do so with respect to the

running of the statute of limitations (Commissioner's Brief in *Simpson* case, pp. 41, 44, 45). It appears obvious, however, that if the return filed is a return sufficient for the purposes of section 275 of the Revenue Acts of 1934 and 1936 it would be a return sufficient for the purposes of section 291 of the Revenue Acts of 1934 and 1936. In the *Simpson* brief, the Commissioner cites section 406 of the Revenue Act of 1935 as being applicable to the penalty assessed in this case. We do not know just exactly how he reconciles section 406, which is a part of Title IV and apparently has no reference to income tax returns as such, with section 291 of the Revenue Acts of 1934 and 1936, respectively. In view of section 291 which specifically refers to returns under income tax statutes, it would seem that section 406 with reference to Internal Revenue tax returns is not concerned with income taxes.

It is a well established rule as announced by decisions of this and other courts that where there is any doubt as to the meaning or interpretation of a statute, it should be resolved to the benefit of the taxpayer. (*Gould v. Gould*, 38 S. Ct. 53, 245 U. S. 151, 68 L. Ed. 211.) This rule has been applied to tax statutes involving the statute of limitations. (*U. S. v. Updike*, 281 U. S. 489, 74 L. Ed. 984, 50 S. Ct. 367.)

Conclusion.

The Commissioner in his brief has said "the consequences of the decision below will be to bar forever the collection, not only of a penalty, but of a tax itself, which the taxpayer, contrary to the plainest mandate, has failed to disclose." Even if such were the result, his plea should be directed to the Congress of the United States for legislation which would avoid such an unfair result. We cannot let the statement pass, however, without commenting upon its shortsightedness. Penalties are intended as punishment for fraud, evasion or wilful or intentional neglect. The Commissioner would extend them beyond such classes merely to serve his own convenience. The Commissioner has undertaken to nullify the decision of this Court in *Germantown Trust Company v. Commissioner*, 309 U. S. 304, without benefit of Congress and because he saw fit to specify separate returns when he could just as easily have obtained all the information necessary in one return. Despite the determination of this Court that where a taxpayer, in good faith, makes the mistake of filing an erroneous return, but such return contains all of the information necessary for the computation of the tax, that under such circumstances, the statute of limitations is not avoided as in the case of the failure to file any return, the Commissioner has undertaken to substitute his law by regulation for decision of this Court. Then to make the exaggerated statement found on page 17 of his brief that in practical effect the consequences of the decision below "will be to bar forever the collection, not only of a penalty,

but of a tax itself," is to indulge in a conclusion too fanciful to require an answer. The decision of this Court in the *Germantown* case has not served "to bar forever the collection" of corporate income taxes. If the Commissioner would more carefully follow the letter of the statute in the exercise of his power to provide for the return of information in returns, he will find an easy answer to his problem. The decision of the Court below was an honest one. It followed the principles enumerated by this Court despite the implorations of a Commissioner of Internal Revenue who seeks to have the law distorted to accomplish his own convenience.

We respectfully submit that the decision of the lower court is correct and should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 115.—October Term, 1943.

Commissioner of Internal Revenue, Petitioner, *vs.* Lane-Wells Company and Technicraft Engineering Corporation.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 14, 1944.]

Mr. Justice Jackson delivered the opinion of the Court.

The Lane-Wells Company is a transferee and successor of the taxpayer Technicraft Engineering Corporation and as such is liable for its taxes. The Commissioner, the Board of Tax Appeals,[1] and the Circuit Court of Appeals[2] have held that Technicraft was a personal holding company in 1934, 1935, and 1936, and that question is no longer open.

For the years named, Technicraft filed the usual corporation income tax returns on Treasury Form 1120. On this form the following appeared: "Is the corporation a personal holding company within the meaning of section 351 of the Revenue Act of 1934 [or the appropriate year]? (If so, an additional return on Form 1120H must be filed.)" To this each year Technicraft answered, "No." In none of the years in question did it file a personal holding company return on Form 1120H. It was advised, and in good faith believed, that it was not a personal holding company within the meaning of the Act.

The Commissioner relies upon the taxpayer's alleged default in two respects. First, the deficiency notices were given within three years of the filing of the corporate return on Form 1120 for the year 1936, but not within three years of such returns for 1934 and 1935 and not within four years (the period as to a transferee) of the 1934 return. Hence, a part of the tax is barred by the statute of limitations if the return filed is the only one required to start the statute. Second, the Commissioner has assessed and the Board has upheld as to each year a 25 per cent penalty for failure to file the personal holding company return.

[1] 43 B. T. A. 463.

[2] 134 F. 2d 977, 980.

The Court of Appeals for the Ninth Circuit reversed the decision of the Board of Tax Appeals. It held the one return sufficient to start the running of the limitation statute as to both income taxes and personal holding company taxes and held that there was no default warranting imposition of the penalty. This decision conflicted with that of the Court of Appeals for the Second Circuit in *Simpson & Co.* v. *Commissioner*, 128 F. 2d 742, and we granted certiorari.

Prior to 1934, as now, personal holding companies were liable for the regular corporation income taxes under Title I of the Revenue Acts and they, like all other corporations, were subject to additional tax upon an accumulation of profits where there was present a purpose of avoiding surtaxes upon shareholders.[3] The obscurity of corporate taxpayers' purposes and difficulties of proof made the latter tax something of a dead letter in practice, and a new tax was devised "to provide for a tax which will be automatically levied upon the holding company without any necessity for proving a purpose of avoiding surtaxes."[4] The new tax was included in a separate title of the Revenue Act of 1934, Title IA—Additional Income Taxes, and constituted Section 351, entitled Surtax on Personal Holding Companies. As part (e) thereof it enacted that administrative provisions, including penalties, applicable in respect of the taxes imposed by Title I should apply in respect of the tax imposed by this section.[5] It seems clear that this section created a new tax separate from that on income of ordinary corporations.

Among the administrative provisions of Title I incorporated by reference in the personal holding company tax section are § 54(a),[6] which requires one liable for such tax to "make such returns and comply with such rules and regulations, as the Commissioner with

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[3] *E. g.*, Revenue Act of 1932, § 104, 47 Stat. 195.

[4] Sen. Rep. No. 558, 73d Cong., 2d Sess., p. 15; 1939-1 Cum. Bull. (Part 2) 586, 596.

[5] § 351(e) provides: "All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable." 48 Stat. 752.

[6] § 54(a) provides: "Every person liable to any tax imposed by this title or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe." 48 Stat. 698.

the approval of the Secretary may from time to time prescribe," and § 62, which directs the Commissioner to prescribe and publish "all needful rules and regulations for the enforcement of this title."[7] Pursuant thereto Treasury Regulations were promulgated providing unequivocally: "A separate return is required for the surtax imposed under section 351. Such return shall be made on Form 1120H."[8]

The taxpayer has not complied with this regulation. It says, however, that its regular corporation income tax return must be taken as an equivalent to the separate return, under our decision in *Germantown Trust Co.* v. *Commissioner*, 309 U. S. 304, both for starting the period of limitation and for avoiding the penalty. The taxpayer in the *Germantown* case filed a return on a wrong form The return contained, however, "all of the data from which a tax could be computed and assessed although it did not purport to state any amount due as tax," and the Court said, "this defect falls short of rendering it no return whatever." 309 U. S. at 308, 310. There the only liability involved was for a Title I income tax, and the return was addressed to that liability, as to which the court held that it set the statute of limitations running. Here the taxpayer is under liabilities for two taxes and under an obligation to file two returns, and it says that one return addressed to but one of the liabilities answers the purpose of both.

It is contended by the Government that the returns in the present case were insufficient to advise the Commissioner that any liability existed for the holding-company tax. The Board of Tax Appeals found that the returns filed by the corporation disclosed its gross income and deductions and its resulting net income. 43 B. T. A. 470, 471. The Circuit Court of Appeals construed this as finding that they "showed all the facts necessary for respondent to compute the taxes as a personal holding company obligation." 134 F. 2d at 978. But it seems admitted that the returns did not show the facts on which liability would be predicated. Such liability was expressly denied by the return, and to obtain data on which corporations subject to the tax could be identified and assessed was the very purpose of requiring a separate return ad-

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[7] § 62 provides: "The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title." 48 Stat. 700.

[8] Regulations 86 and 94, Article 351-8.

dressed to that liability. Taxpayer says that the information called for by Form 1120 H is information that could have been called for by Form 1120. We assume so, but we do not see how the fact helps the taxpayer, for the Treasury was fully within the statute in requiring that information in a separate return.

Congress has given discretion to the Commissioner to prescribe by regulation forms of returns and has made it the duty of the taxpayer to comply. It thus implements the system of self-assessment which is so largely the basis of our American scheme of income taxation. The purpose is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished. For such purposes the regulation requiring two separate returns for these taxes was a reasonable and valid one and the finding of the Board of Tax Appeals that the taxpayer is in default is correct.

Since no personal holding company returns were filed, the statute of limitations did not commence to run,[9] and the assessment of the tax was not barred.[10]

Since the taxpayer defaulted in filing a required return for the years 1934 and 1935, the 25 per cent penalty in the applicable acts became mandatory[11] and was correctly upheld by the Board of Tax Appeals.

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[9] The statute provides: "In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time." § 276(a), 48 Stat. 745.

[10] The Treasury Regulation also provided: "The same provisions of law relating to the period of limitation for assessment and collection which govern the taxes imposed by Title I also apply to the surtax imposed under Title IA. However, since the surtax imposed under Title IA is a distinct and separate tax from those imposed under Title I, the making of a return under Title I will not start the period of limitation for assessment of the surtax imposed under Title IA. If the corporation subject to section 351 fails to make a return, the tax may be assessed at any time." Regulations 86, Art. 351-8.

The Court of Appeals thought this unauthorized. As we have indicated, we do not agree that it was beyond the delegated authority, and it appears only to declare what was even otherwise the law.

[11] The 1934 statute reads: "In case of any failure to make and file a return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, 25 per centum of the tax shall be added to the tax, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect no such addition shall be made to the tax." § 291, 48 Stat. 746. A 25 per cent penalty is likewise mandatory in this case under § 406 of the Revenue Act of 1935, 49 Stat. 1014.

This provision excuses late filing, for reasonable cause, but not complete failure to file.

For 1936 the penalty presents a different question. The statute applicable provides that it could be lifted if it were shown that such failure was "due to reasonable cause and not due to wilful neglect." Revenue Act of 1936, § 291, 49 Stat. 1727. The Board has made no finding on that subject, apparently assuming that the mandatory provisions applied to all years. The question is one of fact in the first instance for the Board's determination. *Dobson* v. *Commissioner*, — U. S. —. The Government does not object to a remand to the Board for the limited purpose of reconsidering the imposition of the 25 per cent penalty for the year 1936 only, if the respondent shall seasonably apply to the Board therefor. In all things else the decision of the Board of Tax Appeals is affirmed. The judgment of the Court of Appeals is reversed, and the cause remanded with directions to remand to the Tax Court for further proceedings in accordance with this opinion.

A true copy.

Test:

Clerk, Supreme Court, U. S.